

MONTANA LEGISLATIVE HISTORY

Chapter 496 19 99

Bill H _____ S 229

Original bill & history ✓ c

H. Committee on Business & Labor

S. Committee on Labor & Emp. Relations

Hearing Date(s) 3/10 _____ c

Hearing Date(s) 1/28 _____ c

3/11 _____ c

ex 2-9 _____ c

_____ c

_____ c

_____ c

_____ c

Date Out _____ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

Free Conference Committee 5/4/13

Free Conference Committee H 4/13

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

SENATE BILLS AND RESOLUTIONS

147

3/19 Transmitted to Governor
 3/23 Signed by Governor
 3/24 Chapter Number Assigned
 Chapter Number 154
 Effective Date: 10/01/1999 - All Sections

SB 228 Introduced by Glaser, et al.

LC0571 Drafter: Petesch

Generally Revise Election Laws;...

1/18 Introduced and 1st Reading
 1/18 Referred to State Administration
 1/18 Fiscal Note Requested
 1/26 Hearing
 1/27 Fiscal Note Received
 1/27 Hearing
 1/28 Fiscal Note Signed
 1/30 Fiscal Note Printed
 Died in Process

SB 229 Introduced by F. Thomas, et al.

LC0580 Drafter: McClure

Exempt Certain School Districts from Nonconstruction Services Job
 Classifications;...

1/18	Introduced and 1st Reading		
1/18	Referred to Labor and Employment Relations		
1/18	Fiscal Note Requested		
1/25	Fiscal Note Received		
1/27	Fiscal Note Printed		
1/28	Hearing		
2/10	Committee Executive Action--Bill Passed as Amended	7	2
2/10	Committee Report--Bill Passed as Amended		
2/11	2nd Reading Passed	30	20
2/12	3rd Reading Passed	32	18

	Transmitted to House		
2/16	Referred to Business and Labor		
2/16	Revised Fiscal Note Requested		
2/17	Revised Fiscal Note Received		
2/18	Revised Fiscal Note Signed		
2/19	Revised Fiscal Note Printed		
3/10	Hearing		
3/11	Committee Executive Action--Bill Concurred	10	8
3/11	Committee Report--Bill Concurred		
3/29	2nd Reading Concurred as Amended	78	21
3/31	3rd Reading Concurred	70	30

	Returned to Senate with Amendments		
4/07	2nd Reading House Amendments Not Concurred	49	0
4/08	Free Conference Committee Appointed		
4/13	Hearing		
4/13	Free Conference Committee Report Received		
4/14	2nd Reading Free Conference Committee Report Adopted	49	0
4/15	3rd Reading Free Conference Committee Report Adopted	39	11

House
 4/09 Free Conference Committee Appointed

HISTORY AND FINAL STATUS 1999

4/13	Free Conference Committee Report Received		
4/15	2nd Reading Free Conference Committee Report Adopted	90	10
4/16	3rd Reading Free Conference Committee Report Adopted	62	36
4/16	Sent to Enrolling		
4/19	Returned from Enrolling		
4/20	Signed by President		
4/21	Signed by Speaker		
4/22	Transmitted to Governor		
4/27	Signed by Governor		
4/29	Chapter Number Assigned		
	Chapter Number 496		
	Effective Date: 4/27/1999 - All Sections		

SB 230 Introduced by Grimes *LC1500 Drafter: Petesch*

Clarify Place of Trial for Action Against a County;...

By Request of Senate Judiciary Standing Committee

1/19	Introduced and 1st Reading		
1/19	Referred to Judiciary		
1/26	Hearing		
1/26	Committee Executive Action--Bill Passed	6	0
1/26	Committee Report--Bill Passed		
1/27	2nd Reading Passed	50	0
1/28	3rd Reading Passed	49	0
	Transmitted to House		
2/16	Referred to Judiciary		
3/08	Hearing		
3/08	Committee Executive Action--Bill Concurred	17	2
3/09	Committee Report--Bill Concurred		
3/12	2nd Reading Concurred	99	1
3/13	3rd Reading Concurred	97	2
	Returned to Senate		
3/13	Sent to Enrolling		
3/15	Returned from Enrolling		
3/15	Signed by President		
3/16	Signed by Speaker		
3/17	Transmitted to Governor		
3/19	Signed by Governor		
3/23	Chapter Number Assigned		
	Chapter Number 128		
	Effective Date: 10/01/1999 - All Sections		

SB 231 Introduced by Jabs *LC1507 Drafter: Petesch*

Clarify the Term of Office for a Justice of the Peace;...

By Request of Senate Judiciary Standing Committee

1/19	Introduced and 1st Reading		
1/19	Referred to Judiciary		
1/26	Hearing		
1/26	Committee Executive Action--Bill Passed	6	0
1/26	Committee Report--Bill Passed		

SENATE BILL NO. 229

1
2 INTRODUCED BY Thomas J. [Signature]
3 ORR (Primary Sponsor) [Signature]

4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE PREVAILING WAGE LAWS FOR PUBLIC
5 WORKS CONTRACTS; EXEMPTING SCHOOL DISTRICT CONTRACTS FOR NONCONSTRUCTION
6 SERVICES FROM JOB CLASSIFICATIONS; CLARIFYING PUBLIC WORKS CONTRACT AND BID
7 SPECIFICATION PROVISIONS TO REQUIRE THAT ALL CONTRACTORS AND SUBCONTRACTORS
8 INVOLVED IN A PROJECT SHALL PAY STANDARD PREVAILING WAGES, INCLUDING FRINGE BENEFITS,
9 FOR ALL JOB CLASSIFICATIONS; ELIMINATING THE CIVIL PENALTY AGAINST PUBLIC AGENCIES THAT
10 FAIL TO INCLUDE REQUIRED PREVAILING WAGE PROVISION IN CONTRACTS; REQUIRING THE
11 COMMISSIONER OF LABOR AND INDUSTRY TO DIVIDE THE STATE INTO 56 PREVAILING WAGE
12 DISTRICTS FOR NONCONSTRUCTION SERVICES TO REFLECT LOCAL ECONOMIES AND FINANCIAL
13 CIRCUMSTANCES; AMENDING SECTIONS 18-2-401, 18-2-407, 18-2-411, AND 18-2-422, MCA; AND
14 PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17
18 Section 1. Section 18-2-401, MCA, is amended to read:

19 "18-2-401. Definitions. Unless the context requires otherwise, in this part, the following
20 definitions apply:

21 (1) A "bona fide resident of Montana" is a person who, at the time of employment and
22 immediately prior to the time of employment, has lived in this state in a manner and for a time that is
23 sufficient to clearly justify the conclusion that the person's past habitation in this state has been coupled
24 with an intention to make it the person's home. Sojourners or persons who come to Montana solely in
25 pursuance of any contract or agreement to perform labor may not be considered to be bona fide residents
26 of Montana within the meaning and for the purpose of this part.

27 (2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

28 (3) (a) "Construction services" means work performed by an individual in construction, heavy
29 construction, highway construction, and remodeling work.

30 (b) The term does not include:

1 (i) engineering, superintendence, management, office, or clerical work on a public works contract;
2 or

3 (ii) consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts
4 with professionals licensed under state law.

5 (4) "Department" means the department of labor and industry provided for in 2-15-1701.

6 (5) "District" means a prevailing wage rate district established as provided in 18-2-411.

7 (6) "Heavy and highway construction wage rates" means wage rates, including fringe benefits
8 for health and welfare and pension contributions, that meet the requirements of the Employee Retirement
9 Income Security Act of 1974 and other bona fide programs approved by the United States department
10 of labor and travel allowance that are determined and established statewide for heavy and highway
11 construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails,
12 parking areas, or utility rights-of-way.

13 (7) "Nonconstruction services" means work performed by an individual, not including
14 management, office, or clerical work, for:

15 (a) the maintenance of publicly owned buildings and facilities, including public highways, roads,
16 streets, and alleys;

17 (b) custodial or security services for publicly owned buildings and facilities;

18 (c) grounds maintenance for publicly owned property;

19 (d) the operation of public drinking water supply, waste collection, and waste disposal systems;

20 (e) law enforcement, including janitors and prison guards;

21 (f) fire protection;

22 (g) public or school transportation driving;

23 (h) nursing, nurse's aid services, and medical laboratory technician services;

24 (i) material and mail handling;

25 (j) food service and cooking;

26 (k) motor vehicle and construction equipment repair and servicing; and

27 (l) appliance and office machine repair and servicing.

28 (8) "Public works contract" means a contract for construction services ~~or nonconstruction~~
29 ~~services~~ let by the state, county, municipality, school district, or political subdivision or for
30 nonconstruction services let by the state, county, municipality, or political subdivision other than a school

1 district in which the total cost of the contract is in excess of \$25,000.

2 (9) (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

3 (i) the heavy and highway construction wage rates applicable to heavy and highway construction
4 projects; or

5 (ii) those wages, other than heavy and highway construction wages, including fringe benefits for
6 health and welfare and pension contributions, that meet the requirements of the Employee Retirement
7 Security Act of 1974 and other bona fide programs approved by the United States department of labor
8 and travel allowance that are paid in the district by other contractors for work of a similar character
9 performed in that district by each craft, classification, or type of worker needed to complete a contract
10 under this part. In each district, the standard prevailing rate of wages must be computed from a weighted
11 average wage rate based on all of the hours worked on work of a similar character performed in the
12 district unless the survey of employers in the district does not generate sufficient data. If the survey
13 produces insufficient data, the rate may be established by the use of other information or methods that
14 the commissioner determines fairly establish the standard prevailing rate of wages. The commissioner
15 shall establish by rule the method or methods by which the standard prevailing rate of wages is
16 determined. The rules must establish a process for determining if there is insufficient data generated by
17 a survey of employers in the district that requires the use of other methods of determining the standard
18 prevailing rate of wages. The rules must identify the amount of data that constitutes insufficient data and
19 require the commissioner of labor to use other methods of determining the standard prevailing rate of
20 wages when insufficient data exists. The alternative methods of determining the prevailing rate of wages
21 must provide for review and the incorporation of data from work of a similar character that is conducted
22 as near as possible to the original district.

23 (b) When work of a similar character is not being performed in the district, the standard prevailing
24 rate of wages, including fringe benefits for health and welfare and pension contributions, that meets the
25 requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved
26 by the United States department of labor and the rate of travel allowance must be those rates established
27 by collective bargaining agreements in effect in the district for each craft, classification, or type of worker
28 needed to complete the contract.

29 (10) "Work of a similar character" means work on private or commercial projects as well as work
30 on public projects."

1

2 **Section 2.** Section 18-2-407, MCA, is amended to read:

3 **"18-2-407. Forfeiture for failure to pay standard prevailing wage.** (1) Any contractor,
4 subcontractor, or employer who pays workers or employees at less than the standard prevailing wage as
5 established under the public works contract shall forfeit to the department a penalty at a rate of up to
6 20% of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money
7 collected by the department under this section must be deposited in the employment security account,
8 as provided in 39-51-409, and must be used for enforcement. A contractor, subcontractor, or employer
9 shall also forfeit to the employee the amount of wages owed plus \$25 a day for each day that the
10 employee was underpaid.

11 (2) Whenever it appears to the contracting agency or to the Montana commissioner of labor and
12 industry that there is insufficient money due to the contractor or the employer under the terms of the
13 contract to cover penalties, the Montana commissioner of labor and industry may, within 90 days after
14 the filing of notice of completion of the project and its acceptance by the contracting agency, maintain
15 an action in district court to recover all penalties and forfeitures due. This part does not prevent the
16 individual worker who has been underpaid or the commissioner of labor and industry on behalf of all the
17 underpaid workers from maintaining an action for recovery of the wages due under the contract as
18 provided in Title 39, chapter 3, part 2, except that appeal of the hearing officer's decision is made directly
19 to district court rather than to the board of personnel appeals.

20 (3) The civil penalties assessed against a contractor, subcontractor, or employer under this
21 section may not be transferred to or accrue against the contracting agency."

22

23 **Section 3.** Section 18-2-411, MCA, is amended to read:

24 **"18-2-411. Creation of prevailing wage rate districts -- construction districts -- nonconstruction**
25 **services districts.** (1) ~~Without~~ (a) Except as provided in subsection (2), without taking into consideration
26 heavy and highway construction wage rates, the commissioner shall divide the state into at least 10
27 prevailing wage rate districts for construction services.

28 (b) The commissioner shall divide the state into a minimum of 56 prevailing wage rate districts
29 for nonconstruction services or one district for each county. An additional prevailing wage rate district
30 must be developed within each county when creation is necessary to adequately reflect local economies

1 and financial circumstances.

2 (2) In initially determining the districts, the commissioner ~~must~~ shall:

3 (a) follow the rulemaking procedures in the Montana Administrative Procedure Act; and

4 (b) publish the reasons supporting the creation of each district.

5 (3) A district boundary may not be changed except for good cause and in accordance with the

6 rulemaking procedures in the Montana Administrative Procedure Act.

7 (4) The presence of collective bargaining agreements in a particular area may not be the sole basis

8 for the creation of boundaries of a district, nor may the absence of collective bargaining agreements in

9 a particular area be the sole basis for changing the boundaries of a district.

10 (5) For each prevailing wage rate district established under this section, the commissioner shall

11 determine the standard prevailing rate of wages to be paid employees, as provided in 18-2-401 and

12 18-2-402."

13
14 **Section 4.** Section 18-2-422, MCA, is amended to read:

15 **"18-2-422. Bid specification and public works contract to contain standard prevailing wage rate.**

16 All public works contracts and the bid specifications for those contracts must contain a provision stating

17 ~~for each job classification the standard prevailing wage rate, including fringe benefits, that the contractors~~

18 ~~and subcontractors shall pay during construction of the project~~ that all contractors and subcontractors

19 involved in a project shall pay the standard prevailing wage, including fringe benefits, for all job

20 classifications."

21
22 **NEW SECTION. Section 5. Effective date -- applicability.** [This act] is effective July 1, 1999, and

23 applies to contracts entered into on or after July 1, 1999.

24 - END -

FISCAL NOTE

Bill #: SB0229

Title: Revise prevailing wage laws

Primary
Sponsor: Fred Thomas

Status: As introduced

Sponsor signature

Date

Dave Lewis, Budget Director

Date

Dave Lewis 1-25-99

Fiscal Summary

	<u>FY2000 Difference</u>	<u>FY2001 Difference</u>
Expenditures:		
State Special Revenue	\$71,700	\$76,000
Revenue:	\$0	\$0
Net Impact on General Fund Balance:	\$0	\$0

<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>	
	X	Significant Local Gov. Impact	X		Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts

Fiscal Analysis

ASSUMPTIONS:

- Currently, the Department of Labor and Industry (DOLI) is utilizing one full FTE to run the state prevailing wage program. The proposed legislation would require an additional 1.00 FTE during FY 2000 and 1.25 FTE during FY 2001.
- A .5 FTE (grade 9 - \$12,500) would respond to additional telephone calls requesting prevailing wage rates or dealing with enforcement-related issues.

SB 229

FISCAL NOTE

Title: **Revise prevailing wage laws**

Status: Second reading, corrected copy

Dave Lewis 2-17-99
Dave Lewis, Budget Director Date

Fiscal Summary

	<u>FY2000 Difference</u>	<u>FY2001 Difference</u>
Expenditures:	\$0	\$0
Revenue:	\$0	\$0
Net Impact on General Fund Balance:	\$0	\$0

<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts

Fiscal Analysis

ASSUMPTIONS:

1. SB229, as amended by the Committee on Labor and Employment Relations, has no fiscal impact.

SB 229 #2

INDEX TO BILLS IN COMMITTEE

June 30, 1999

- Committee: (S) Labor and Employment Relations -

04:59 PM

-
- SB 218** **SPONSOR:** Miller, Ken **SHORT TITLE:** Allow property owner to do electrical work on own property
 REFERRED ON: 01/16/1999 **HEARD ON:** 01/28/1999
 TABLED ON: 02/10/1999
 FINAL DISPOSITION 03/01/1999 (S) Missed Deadline for General Bill Transmittal
-
- SB 223** **SPONSOR:** Roush, Glenn **SHORT TITLE:** Placing Conditions on Workers' Compensation Volume Premium Discounts
 REFERRED ON: 01/18/1999 **HEARD ON:** 02/02/1999
 TABLED ON: 02/10/1999
 FINAL DISPOSITION 03/01/1999 (S) Missed Deadline for General Bill Transmittal
-
- SB 229** **SPONSOR:** Thomas, Fred **SHORT TITLE:** Exempt certain school districts from nonconstruction services job classification
 REFERRED ON: 01/18/1999 **HEARD ON:** 01/28/1999
 EXECUTIVE ACTION: 02/10/1999 Bill Passed as Amended -- VOTE: 7 - 2
 FINAL DISPOSITION 04/29/1999 Chapter Number Assigned
-
- SB 242** **SPONSOR:** Miller, Ken **SHORT TITLE:** Revise laws applicable to electrical apprentices
 REFERRED ON: 01/20/1999 **HEARD ON:** 02/02/1999
 EXECUTIVE ACTION: 02/10/1999 Bill Passed as Amended -- VOTE: 5 - 4
 FINAL DISPOSITION 02/12/1999 (S) 3rd Reading Failed; Vote: 24 - 26
-
- SB 245** **SPONSOR:** Waterman, Mignon **SHORT TITLE:** Adopt wage and hour exemption for home companions for elderly and disabled
 REFERRED ON: 01/20/1999 **HEARD ON:** 02/04/1999
 EXECUTIVE ACTION: 02/10/1999 Bill Passed as Amended -- VOTE: 9 - 0
 FINAL DISPOSITION 03/27/1999 Chapter Number Assigned
-
- SB 271** **SPONSOR:** Taylor, Mike **SHORT TITLE:** Employer immunity for disclosures about former or current employees
 REFERRED ON: 01/23/1999 **HEARD ON:** 02/04/1999
 EXECUTIVE ACTION: 02/17/1999 Bill Passed as Amended -- VOTE: 8 - 1
 FINAL DISPOSITION 05/07/1999 Chapter Number Assigned
-
- SB 305** **SPONSOR:** Thomas, Fred **SHORT TITLE:** Prohibit project labor agreements on public projects
 REFERRED ON: 01/27/1999 **HEARD ON:** 02/09/1999
 EXECUTIVE ACTION: 02/12/1999 Bill Passed -- VOTE: 6 - 3
 FINAL DISPOSITION 05/04/1999 Chapter Number Assigned
-

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on January 28, 1999 at
3:00 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Tom Keating, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Alvin Ellis (R)
Sen. Bob Keenan (R)
Sen. Walter McNutt (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Gilda Clancy, Committee Secretary
Eddye McClure, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 229, 1/21/99; SB 218,
1/28/99
Executive Action: SB 90

HEARING ON SB 229

Sponsor: SEN. FRED THOMAS, SD 31, Stevensville

Proponents: Lance Melton, General Counsel, Montana School
Boards Association
Don Waldron, Montana Rural Education Association
Jerry Perkins, Karst Stage
John Cheek, Superintendent Drummond Schools
Craig Brewington, Superintendent Hellgate Schools

Opponents: Phil Campbell, Montana Education Association, also
Montana Federation of Teachers
Darrell Holzer, Montana State AFL-CIO
Gene Fenderson, Montana Joint Heavy & Highways
Committee
Jerry Driscoll, Montana Building Trades

Opening Statement by Sponsor:

SEN. FRED THOMAS, SD 31, Stevensville, opened SB 229 by stating this bill is meant to address a significant unfunded mandate which was placed on Montana schools last session with the passage of HB 407. That bill added service occupations to the prevailing wage laws and has increased the cost of operating important school district programs, particularly hot lunch and transportation programs to the extent that it threatens the continuation of these programs across the State of Montana. To name a few, Libby Food Service, Drummond Bus Service, and Hamilton Bus Service. A remedy for this problem is inserted into SB 229 by exempting K-12 school districts from the application of prevailing wages for service occupations added last session. Senate Bill 229 is identical to legislation offered by SEN. BOB KEENAN in the form of SB 77 which exempted the Department of Public Health & Human Services from service contracts in which this Committee in the Senate has recently passed. Senate Bill 229 will provide a fair process for compliance of prevailing wage laws by requiring a public agency to place a statement regarding prevailing wage law. It will put to end the practice of assessing civil penalties against the school district when a contractor violates the prevailing wage law. EXHIBIT(1) He said he endorsed the amendments, remove the requirement that the Department of Labor adopt 56 wage districts from service occupations, or one wage district from each county. The

Department of Labor has reported this provision would generate a good amount of money to implement this and, also, remove the fiscal impact. If this legislation is moved out of this Committee, **SEN. THOMAS** will ask for the fiscal statement to be revised.

Proponents' Testimony:

Lance Melton, General Counsel, Montana School Boards Association, said the school districts throughout the state are greatly concerned. **EXHIBIT(2)** He stated these letters show the effect of HB 407 from last session is having a disastrous financial affect on our school districts with respect to all the service occupations which were added under HB 407 last session.

Don Waldron, Montana Rural Education Association, stood as a proponent to SB 229. **EXHIBIT(3), EXHIBIT(4), EXHIBIT(5)**

Jerry Perkins, Karst Stage, Bozeman, said he runs a charter school bus operation for three school districts in the state. **EXHIBIT(6)**

John Cheek, Superintendent Drummond Schools, is in support of this bill. He explained they have a situation in Drummond where they have contracted busses, and since they are a small school district, this affects their general budget. The Missoula School District is paying around \$8.40 per hour and since Drummond is in an area with Butte-Anaconda, they are paying \$13.26 per hour. They are beginning negotiations with their contractor who is paying \$11.50 per hour.

Craig Brewington, Superintendent Hellgate Elementary Schools, gave an example of working with prevailing wage. Last summer, his clerk had an irrigation contractor working in her back yard. This contractor did an excellent job and the price was good. He asked the contractor how much underground sprinkling system could he cover for \$14,000, which is all the money they had in their budget for this system. If they went over \$15,000, they would have to ask for bids. This contractor covered two soccer fields and a football field. If they would have had to put out a bid the price would have been \$22,000 for this contractor to cover the bidding requirements. When this contractor paid his workers, he paid them to do the backyard job for his clerk, but when he

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completes a school job, things change dramatically. **Mr. Brewington** explained he has a school buss contract in the amount of \$380,000 and is fearful of what the cost increase will be. He asked for support on SB 229.

EXHIBIT(7) was mailed into the Committee in support of SB 229.

{Tape : 1; Side : A; Approx. Time Counter : 17 - 31}

Opponents' Testimony:

Phil Campbell, Montana Education Association, also the Montana Federation of Teachers, said they stand in opposition to most of this bill. They do agree with the Gray Bill portion and the portion of the bill that states when the contract goes out for bid, the contractors should know it is a public works contract and prevailing wage applies. The part of the bill which eliminates the school districts, they oppose. He said the service portion of this law was made effective in 1973, not since last session. Apparently, there are people who did not know that, but he does not believe we should change the law because of that. He says this situation shouldn't affect school districts since the Attorney General's opinion in 1988. They oppose it because what they think will happen is, as school budgets get tight, portions of whole job categories will be limited, such as food service, janitorial service, bus service, etc. If they do not have to comply with prevailing wage, people employed by the school districts will lose their jobs and these jobs will be contracted out for lower wages and benefits. He stated that is not good economics and our state should not be engaged in something that will drive down our economic base even lower.

Darrell Holzer, Montana State AFL-CIO, affirmed their opposition of SB 229. The prevailing wage positions and fees are being paid with public tax dollars. We seem to lose sight of the fact that the people this will affect are Montana citizens and also Montana taxpayers. We need to do whatever we can to elevate wages in the State of Montana. This bill would suppress wages. It is not difficult to find contractors who are willing to work for \$4 to \$5 per hour. We, as a state, have an obligation to do the best job we can. The role the folks who are working in these contract positions is absolutely critical to our education system.

SENATE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

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Gene Fenderson, Montana Joint Heavy & Highway Committee, gave some history on this matter. He said three years ago there was an on-going committee in the Department of Labor which the school districts, cities and towns, labor unions and different government entities attended. This committee set service rates. The argument, after the Attorney General's statement in 1988, was that this law was too broad and nobody knew what was covered. That group worked those things out which resulted in a definition of services which clarified that bill one more time. Now two years later, we are wanting to change it again. He handed out a map of the districts which show prevailing wage. **EXHIBIT(8)** In 1988 several legislators and **Mr. Fenderson** spent many hours working this situation out. They came to a compromise in arranging prevailing wage in districts, not only for construction but also for purchases of services. There were originally five districts, and the small towns complained that the 'big' wages were being imported. They addressed those issues and he believes they did an extremely good job. **Mr. Fenderson** also brought up the non-printing of the required wages within the act. In this state there used to be one book on services and construction. At that time, the architects and engineers complained and did not want to print those books. The Department of Labor began printing books with about 10 to 15 pages in them for each district, one for construction and one for services. In 1983 there was a Supreme Court case named "The Yellow Bay Case" in which a contractor did not pay the correct prevailing rates. His argument was that he did not have to pay them because the amount was not stated. It went to the Supreme Court and this contractor won his case. The committee then went back to the Department of Labor in 1984 and with the help of the legislature, it was law that contractors had to use prevailing wages. This bill is regressive after all the work which has been done in the past. He urged the Committee to "do not pass".

Jerry Driscoll, Montana Building Trades, said prior to last session every occupation had to use prevailing wage. There was a request from a town to prevail the rate of beekeepers and that's what prompted the bill last session to limit prevailing wage to 12 occupations. He said people need to answer surveys which determine what the occupation in their districts pay. The provision regarding publishing the amount of prevailing wage was never suppose to be paid by the city or county. It is suppose to be paid by the architect or the engineer by their errors and omissions insurance. That was the intent of the law. If people

SENATE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

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don't participate they should not try to change the law. He said on page 5 of this bill, it states prevailing wage must be paid, but if it is not paid there is no penalty. He asked the Committee not to pass this bill.

{Tape : 1; Side : A; Approx. Time Counter : 31 - 43}

Questions from Committee Members and Responses:

SEN. WALTER MCNUTT asked **John Cheek** about the impact to the school budget. If they did not have this financial impact, he asked where these funds would go.

Mr. Cheek said if they do not have enough transportation money, it has to come out of the general budget.

SEN. MCNUTT asked where the money comes from if it comes out of the General Fund.

Mr. Cheek responded it would come in place of something else, such as wages for teachers, textbooks, classroom expenses, technology, etc.

CHAIRMAN KEATING asked **SEN. THOMAS** if the suggested amendments eliminate the need for a fiscal note.

SEN. THOMAS responded that is correct. The amendments recommend eliminating the 56 prevailing wage districts which eliminates the fiscal impact. Last year there was no fiscal impact, this year, ironically, there is a fiscal impact in the school districts.

SEN. SUE BARTLETT asked **Bob Rafferty, Chief of Analysis Bureau, Department of Labor & Industry**, to give a concise summary of what the process is and how the current rates for services may have been set and how they will be set for coming years.

Mr. Rafferty answered they perform the survey by trying to identify occupations by industry. They also have a list of all the firms in the state, which entails 35,000 employers that they economically code by industry. They have names and addresses of industries which have some of those occupations. In terms of how that process would continue with this legislation, they would continue with the current process and there would not be any

changes with the exception of those occupations which would be excluded from this bill.

SEN. BARTLETT asked **Mr. Rafferty** whether or not he was consulted for technical information when the committee worked to produce SB 407.

Mr. Rafferty responded they were part of the work group from the Department side. They tried to bring in effected parties regarding HB 407 in terms of the Department being able to enforce, and being able to set rates, and try to make some sense out of the different occupations with a limited amount of planning and skill. He said they were consulted and helped plan with advise.

SEN. BARTLETT said she recalled SB 407, actually it was HB 407, when it reached the Senate Labor Committee, it did not require the use of the 10 districts, at least for services. She asked if **Mr. Rafferty** was familiar with that situation and what the original provisions of HB 407 where.

Mr. Rafferty answered the manner in which services were calculated prior to HB 407, was a state-wide range. In terms of the committee, there was some sense that perhaps services were more local than state-wide. In that discussion, it was never determined what 'local' meant. They reverted back to the 10 districts which applied for non-construction services, and these were areas in which rates were already set.

CHAIRMAN KEATING asked **Mr. Rafferty** if the exempt classes such as school bus drivers in the Department of Labor's survey were exempt, if they would not be included as a part of the survey to determine the prevailing wage.

Mr. Rafferty answered if he knew they were specifically exempted, he would not go out and survey the bus drivers. He might have to survey a different occupation because it would affect other non-construction services. He would have to judge this on a case-by-case basis.

SEN. DALE BERRY stated his own district in Missoula County is in much better condition economically than Ravalli County and yet it

appears we are creating a better situation for Ravalli and Mineral Counties because we are bringing their averages down in prevailing wages. It is pushing the averages in Ravalli County considerably higher. That almost personifies every district, that there is someone pushing the more needy counties up and are bringing down the counties which are more capable and have better economic situations. He asked about consideration of local versus district areas.

Mr. Rafferty responded in terms of the response of the labor market area; where people are now and where they were, and they look at areas where people are willing to commute. In terms of trying to separate the place of residence and the place of work is difficult. If they consider too small of area, they don't get the data. By the provisions of the last legislation, they look at prevailing contracts and if there are no union contracts or collective bargaining agreements, they go to surrounding districts.

SEN. BARTLETT asked **John Andrew, Department of Labor**, if he was part of that working committee and if he was familiar with the original provisions of HB 407, specifically in relation to whether the districts were in or not.

Mr. Andrew answered he was part of the group which made recommendations for prevailing wage law. He said he does not recall what happened with the original provisions of HB 407.

SEN. BARTLETT inquired whether or not **Lance Melton** was familiar with the Supreme Court decision of 1983 which addressed the specific point about not having the prevailing rates themselves in the contracts.

Mr. Melton stated it has been some time since he looked at that opinion but he his acquainted with it.

SEN. BARTLETT said she has a copy of it in hand and one of the things it says is, "under the basic contract principles, a party cannot be bound to terms he is not aware of and, therefore, this contractor cannot be held to payment of specific rate which did not appear in the contract of which he had no knowledge but only existed somewhere within the bureaucracy". She asked with that language in a Supreme Court decision, and a requirement in this

SENATE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

January 28, 1999

PAGE 9 of 20

bill which would eliminate putting the specific information in the bid specifications and the contract, how are prevailing rates suppose to be enforced.

Mr. Melton responded when this bill was drafted, it was drafted specifically to overturn that Supreme Court ruling and he believes they have. If you wanted to go the extra step, you could include language which states that contractors that shall pay prevailing wage should contact the Department of Labor. He thinks this will overcome what the Supreme Court dealt with at that time, which was a different statute. The present statute says the minute you fail to include those wage rates, the contractor is completely relieved from any obligation to pay prevailing wages, it immediately attaches to the public agency, even if the contractor was specifically and thoroughly familiar with the wage rates due to those workers.

SEN. BARTLETT asked on construction projects if districts generally use architects and engineers in helping them design the project and fashion the bid specs and get through the technical process of getting a contractor selected and getting things under way.

Mr. Melton responded for the most part, yes. It would depend upon the nature of the project. They've had specific exemptions from the Board of Architects regarding situations where the County Attorney has issued an opinion that it didn't affect public health, safety and welfare and there are instances where an architect is not involved. In addition, last session **SEN. THOMAS** brought a separate bill forward that dealt with part of that issue, but the argument is, still from the architects. You cannot talk to them until you first guarantee them a sum of money. There are school districts, which, in an attempt to maintain fiscal responsibility, go as long as possible in the planning stages before consulting with the architect. He said an architect will be aware of the necessity of putting the wage rate in the bid specifications. There are instances where other experts such as an engineer or land surveyor not present for the school district who might say wage rate shall be paid in accordance with the prevailing wages. He knows of a contractor who was aware of the prevailing wage rates, who saw a bid spec without the wage rate in it, put in the bid, and was way under bid from anyone else. When the time came due, the district found

district found themselves with a liability suit for the differential in the wage rate.

SEN. BARTLETT asked if one of the services provided by the Montana School Boards Association for its member districts be to prepare some standard information for them for this project and how to deal with the bid specs and the contract requirements and prevailing rates.

Mr. Melton responded that is correct. He has written four articles in their newsletter over the past two years, most of them immediately following the passage of HB 407, giving detail regarding the affect of HB 407. He also visited the entire state and part of that involved giving specific guidance to school districts regarding the requirements of HB 407.

SEN. BARTLETT asked if it was likely that the instances he gave the example of are likely to occur.

Mr. Melton responded the Montana School Boards Association represents most, but not all school districts. Even though he would like to think they are well attended enough to have a representative from every one of their districts, that is not the case. He still has districts call who do not know what prevailing wage loss is. They are doing their best but it is not possible to cover the entire state in that regard.

SEN. BARTLETT inquired where there are architects involved in a project, isn't it a reasonable expectation that it is the architect's responsibility to help the school district make sure these kinds of requirements are fulfilled. If there is an error or an omission for the architect to be the party liable rather than the public agency.

Mr. Melton answered that might work in some instances but not in all. Last session a bill was rejected which would require specific coverage for errors and omissions for architects on public projects for school districts. That would depend upon the financial assets and availability and possession of insurance by the architect involved in the project. West Yellowstone had an architect who absolutely botched a job by everybody's agreement and he didn't have any coverage. It depends on the whims of the particular licensed architect as to whether or not he or she

SENATE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

January 28, 1999

PAGE 11 of 20

decides to obtain coverage, and whether or not it is adequate coverage.

SEN. THOMAS closed the hearing by stating there was a lot of discussion about last year's consensus bill. That was the term used two years ago on the proposed HB 407. It was a consensus between big government, the Department of Administration, big business contractors, and big labor. They sat down and agreed to what they came up with and that virtually affects our local school districts. There is a lot of philosophy in this room and he respects everyone else, but because we say we have this arbitrary law and will take out of one pocket and put it in another, does not build the economy. That is not his philosophy. His philosophy is one of individual annuity, initiative and opportunity. He wants the bill amended to the Gray Bill format, which eliminates the prevailing wage district business. The districts **Mr. Fenderson** handed out in **EXHIBIT 8** would remain intact. We all know our school districts have a finite amount of money, so do the taxpayers. So where is the priority? It is good to see our education association tell us where their priority is and the choice is really ours. Is our priority the classroom or is it hot lunch programs, or is it an arbitrary wage set by the Department of Labor? When you take a look at the prevailing wage in this aspect, it is unfair. The school district can contract, do their own bussing and do what they want. But if they bid that out, they have to pay an arbitrary wage that the Department of Labor sets and that is undisputable. The purpose of our school districts is to educate our children. It is not to be some sort of hiring agency for our public.

{Tape : 1; Side : B; Approx. Time Counter : 62 - 104}

HEARING ON SB 218

Sponsor: SEN. KEN MILLER, SD 11, Laurel,

Proponents: Ronda Carpenter, Montana Housing Providers

Opponents: Perry Eskridge, State Board of Electricians
 Scott Hudson, Master Electrician, International
 Brotherhood of Electrical Workers
 Don Herzog, Master Electrician, International
 Brotherhood of Electrical Workers
 Bill Qualls, Electrical Contractor

SENATE BILL NO. 229

INTRODUCED BY F. THOMAS

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 1DATE 1-28-99BILL NO. SB229

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE PREVAILING WAGE LAWS FOR PUBLIC WORKS CONTRACTS; EXEMPTING SCHOOL DISTRICT CONTRACTS FOR NONCONSTRUCTION SERVICES FROM JOB CLASSIFICATIONS; CLARIFYING PUBLIC WORKS CONTRACT AND BID SPECIFICATION PROVISIONS TO REQUIRE THAT ALL CONTRACTORS AND SUBCONTRACTORS INVOLVED IN A PROJECT SHALL PAY STANDARD PREVAILING WAGES, INCLUDING FRINGE BENEFITS, FOR ALL JOB CLASSIFICATIONS; ELIMINATING THE CIVIL PENALTY AGAINST PUBLIC AGENCIES THAT FAIL TO INCLUDE REQUIRED PREVAILING WAGE PROVISION IN CONTRACTS; ~~REQUIRING THE COMMISSIONER OF LABOR AND INDUSTRY TO DIVIDE THE STATE INTO 56 PREVAILING WAGE DISTRICTS FOR NONCONSTRUCTION SERVICES TO REFLECT LOCAL ECONOMIES AND FINANCIAL CIRCUMSTANCES;~~ AMENDING SECTIONS 18-2-401, 18-2-407, ~~18-2-413~~ AND 18-2-422, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 18-2-401, MCA, is amended to read:

"18-2-401. **Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) A "bona fide resident of Montana" is a person who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the person's past habitation in this state has been coupled with an intention to make it the person's home. Sojourners or persons who come to Montana solely in pursuance of any contract or agreement to perform labor may not be considered to be bona fide residents of Montana within the meaning and for the purpose of this part.

(2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(3) (a) "Construction services" means work performed by an individual in construction, heavy construction, highway construction, and remodeling work.

(b) The term does not include:

(i) engineering, superintendence, management, office, or clerical work on a public works contract;

or

(ii) consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts with professionals licensed under state law.

(4) "Department" means the department of labor and industry provided for in 2-15-1701.

(5) "District" means a prevailing wage rate district established as provided in 18-2-411.

(6) "Heavy and highway construction wage rates" means wage rates, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that are determined and established statewide for heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, or utility rights-of-way.

(7) "Nonconstruction services" means work performed by an individual, not including management, office, or clerical work, for:

(a) the maintenance of publicly owned buildings and facilities, including public highways, roads, streets, and alleys;

(b) custodial or security services for publicly owned buildings and facilities;

(c) grounds maintenance for publicly owned property;

(d) the operation of public drinking water supply, waste collection, and waste disposal systems;

(e) law enforcement, including janitors and prison guards;

(f) fire protection;

(g) public or school transportation driving;

(h) nursing, nurse's aid services, and medical laboratory technician services;

(i) material and mail handling;

(j) food service and cooking;

(k) motor vehicle and construction equipment repair and servicing; and

(l) appliance and office machine repair and servicing.

(8) "Public works contract" means a contract for construction services ~~or nonconstruction services~~ let by the state, county, municipality, school district, or political subdivision or for nonconstruction services let by the state, county, municipality, or political subdivision other than a school district in which the total cost of the contract is in excess of \$25,000.

(9) (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

(i) the heavy and highway construction wage rates applicable to heavy and highway construction projects; or

(ii) those wages, other than heavy and highway construction wages, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that are paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part. In each district, the standard prevailing rate of wages must be computed from a weighted average wage rate based on all of the hours worked on work of a similar character performed in the district unless the survey of employers in the district does not generate sufficient data. If the survey produces insufficient data, the rate may be established by the use of other information or methods that the commissioner determines fairly establish the standard prevailing rate of wages. The commissioner shall establish by rule the method or methods by which the standard prevailing rate of wages is determined. The rules must establish a process for determining if there is insufficient data generated by a survey of employers in the district that requires the use of other methods of determining the standard prevailing rate of wages. The rules must identify the amount of data that constitutes insufficient data and require the commissioner of labor to use other methods of determining the standard prevailing rate of wages when insufficient data exists. The alternative methods of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character that is conducted as near as possible to the original district.

(b) When work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that meets the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and the rate of travel allowance must be those rates established by collective bargaining agreements in effect in the district for each craft, classification, or type of worker needed to complete the contract.

(10) "Work of a similar character" means work on private or commercial projects as well as work on public projects."

Section 2. Section 18-2-407, MCA, is amended to read:

"18-2-407. Forfeiture for failure to pay standard prevailing wage. (1) Any contractor,

subcontractor, or employer who pays workers or employees at less than the standard prevailing wage as established under the public works contract shall forfeit to the department a penalty at a rate of up to 20% of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money collected by the department under this section must be deposited in the employment security account, as provided in 39-51-409, and must be used for enforcement. A contractor, subcontractor, or employer shall also forfeit to the employee the amount of wages owed plus \$25 a day for each day that the employee was underpaid.

(2) Whenever it appears to the contracting agency or to the Montana commissioner of labor and industry that there is insufficient money due to the contractor or the employer under the terms of the contract to cover penalties, the Montana commissioner of labor and industry may, within 90 days after the filing of notice of completion of the project and its acceptance by the contracting agency, maintain an action in district court to recover all penalties and forfeitures due. This part does not prevent the individual worker who has been underpaid or the commissioner of labor and industry on behalf of all the underpaid workers from maintaining an action for recovery of the wages due under the contract as provided in Title 39, chapter 3, part 2, except that appeal of the hearing officer's decision is made directly to district court rather than to the board of personnel appeals.

(3) The civil penalties assessed against a contractor, subcontractor, or employer under this section may not be transferred to or accrue against the contracting agency."

~~Section 3. Section 18-2-411, MCA, is amended to read:~~
~~18-2-411. Creation of prevailing wage rate districts. Construction districts. nonconstruction services districts. (1) Without (a) Except as provided in subsection (2), without taking into consideration heavy and highway construction wage rates, the commissioner shall divide the state into at least 10 prevailing wage rate districts for construction services.~~

~~(b) The commissioner shall divide the state into a minimum of 50 prevailing wage rate districts for nonconstruction services or one district for each county. An additional prevailing wage rate district must be developed within each county when creation is necessary to adequately reflect local economies and financial circumstances.~~

~~(2) In initially determining the districts, the commissioner must shall:~~

- ~~(a) follow the rulemaking procedures in the Montana Administrative Procedure Act; and~~
- ~~(b) publish the reasons supporting the creation of each district.~~

~~(3) A district boundary may not be changed except for good cause and in accordance with the rulemaking procedures in the Montana Administrative Procedure Act.~~

~~(4) The presence of collective bargaining agreements in a particular area may not be the sole basis for the creation of boundaries of a district, nor may the absence of collective bargaining agreements in a particular area be the sole basis for changing the boundaries of a district.~~

~~(5) For each prevailing wage rate district established under this section, the commission shall determine the standard prevailing rate of wages to be paid employees, as provided in 18-2-401 and 18-2-402.~~

Section 4. Section 18-2-422, MCA, is amended to read:

"18-2-422. Bid specification and public works contract to contain standard prevailing wage rate.

All public works contracts and the bid specifications for those contracts must contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, that the contractors and subcontractors shall pay during construction of the project that all contractors and subcontractors involved in a project shall pay the standard prevailing wage, including fringe benefits, for all job classifications."

NEW SECTION. Section 5. **Effective date -- applicability.** [This act] is effective July 1, 1999, and applies to contracts entered into on or after July 1, 1999.

- END -

Exhibit # 2
From Senate Labor & Employment
The full exhibit is available from: Relations
Montana Historical Society Archives
225 North Roberts
PO Box 201201
Helena, MT 59602-1201
Phone: (406) 444-4775

*25 pages of
information
& letters*



To: Senator Keating, Senate Labor and Employment Relations Committee
From: Lance Melton, General Counsel, MSBA
Subject: Senate Bill 229
Date: January 28, 1999

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 2

DATE 1-28-99

BILL NO. SB229

Senate Bill 229 seeks to relieve school districts from a significant unfunded mandate passed in the last session. The Legislature passed House Bill 407 last session upon the contention of those supporting the bill that it was doing nothing more than codifying a long-standing attorney general's opinion. In part, that contention was true. Not only was that attorney general's opinion long-standing however, it was long ignored as well by school districts, by state agencies like the Department of Public Health and Human Services, and, last but not least, by the Department of Labor as well.

This Committee previously considered and passed Senate Bill 77, introduced by Senator Bob Keenan. That bill exempted the Department of Public Health and Human Services from the payment of prevailing wages on the services added under House Bill 407 last session. Much of the rationale for that exemption was contained in the fiscal note, which identified that the DPHHS had not been following the law created by the 1988 attorney general's opinion. Every rationale that justified support of Senate Bill 77 is at least equally present in the bill before you today.

The Exemption of Schools from the Service Occupations Added Last Session:

House Bill 407 from last session has wreaked havoc with Montana's public schools. By adding the service occupations to the law and allowing the wage rates to be set on the basis of wage rate districts that had been drafted for the construction industry in the mid-1980's, the new law created an unfunded liability and mandate for virtually every school district in the state that contracts out any of its services. The two areas hit the hardest were the food service programs and the bus contracts.

The fact is that the law created by House Bill 407 simply does not work for school districts. School districts from throughout the state have found that the new law has drastically increased the costs of operation without any means of providing for such increased costs. There are compelling examples of the devastating effect of the new law on school district programs which are referenced in the attached letters of support for Senate Bill 229. Among those examples, the following are particularly compelling:

1. The Libby School District, for example, has been hit so hard by the new law and the inflated wage rates deduced by the Department of Labor that it will have no other choice but to terminate its school lunch program if Senate Bill 229 fails.
2. The Bozeman School District has found that the application of the prevailing wage laws to its existing contract for bus services increased yearly costs by \$56,000. The increased costs came without any additional funds.
3. The Missoula School District, which has long contracted with Beech Transportation, one of the most successful private bus companies in the state, has identified that the costs of its bus services will increase substantially when its current contract expires.

The Method of Complying with the Prevailing Wage Laws

Senate Bill 229 also provides a fair, less confusing method of complying with the prevailing wage laws than the method required under present law. Under present law, a public agency cannot simply notify the contractor in the bid specifications and in the contract itself that the prevailing wage laws are applicable. The public agency must predict each position that will be necessary to the contract, and provide the specific wage rate for each of those positions in the bid specifications and in the contract. Senate Bill 229 proposes to change this confusing process, and replace it with a requirement that contracts and bid specifications for projects that are subject to the prevailing wage laws contain a statement that the contractor must pay the prevailing wage.

The Assessment of Civil Fines Against a Public Agency for a Contractor's Violation of the Prevailing Wage Laws:

Senate Bill 229 also seeks to eliminate the assessment of civil penalties against public agencies when a contractor violates the prevailing wage laws. It makes little sense for one publicly-funded agency to civilly fine another publicly-funded agency for a contractor's violation of the prevailing wage laws. This is simply shifting tax dollars around without any meaningful effect. By eliminating the shifting penalties, Senate Bill 229 will provide public agencies with a greater opportunity to pay the differential in wage rates for the workers, rather than the civil fines to another public agency that will leave fewer dollars to provide for the wages of workers.

Senate Bill 229 deserves your strong support, and MSBA appreciates your consideration of this bill. If you have any questions, I will be available to provide any information I have.

Thanks.



MONTANA RURAL EDUCATION ASSOCIATION

1134 1/2 Butte Avenue
Helena, MT 59601-3823

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 3

DATE 1-28-99

BILL NO. SB 229

Phone: 406-443-2629 FAX: 406-443-5297 E-mail: mrea@mcn.net

TO: Senator Tom Keating, Chairman
Senate Labor and Employment Relations Committee

DATE: January 28, 1999

SUBJECT: SB 229 by Senator F. Thomas

The Montana Rural Education Association (MREA) and the Montana School Bus Contractors Association (MSBCA) are very much in favor of Senate Bill 229. In fact, we had requested a similar bill, but after reading SB 229, we dropped our request and now support SB 229 wholeheartedly.

In the last legislative session, the prevailing wage bill (HB 407) extended coverage to school non-construction services and has caused undue hardships for school districts and their service providers when interpolating existing contracts to comply with the new law. For example, a bus route contract may run from one to five years, and adjusting these contracts has been very costly and confusing to both the schools and the contractors. No matter where the responsibility of cost falls, the local taxpayer is the actual loser.

Senator Thomas's SB 229, in a very fair and simple way, clearly defines the differences in construction contracts and non-construction service contracts. The School Bus Contractors Association and MREA urge your committee to give **SB 229** a "do pass" vote. Thank you for your time and consideration to this issue.

Sincerely,

Donald R. Waldron
Executive Director

Date: Wed, 27 Jan 1999 13:58:16 -0700
To: senate@state.mt.us.
From: Scobey School <2spartan@nemontel.net
Subject: Senator Keating
Cc: <lmelton@mtsba.org

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4
DATE 1-28-99
BILL NO. SB229

From: **Dustin Hill, Superintendent**
Scobey school District #1
Scobey, MT 59263
email: 2spartan@nemontel.net

Dear Senator Keating:

I am writing concerning SB 229. This bill would give much needed relief to schools who would otherwise be required to raise salaries of certain individuals on our payrolls to rates we cannot afford. I am in the process of cutting back over \$90,000 in a budget of \$1,640,000. This means that I will in all likelihood have to cut staff members. If we are burdened with greater costs, we will have to cut staff further. I ask your committee's support in making it easier for school districts to comply with the prevailing wage laws.

January 27, 1999

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 5

DATE 1-28-99

BILL NO. SB229

The Honorable Senator Tom Keating
and members of the
Senate Labor & Employment Relations Committee
The Montana Senate
State of Montana

Sent via E-mail

RE: S.B. 229

Dear Senator Keating and Committee Members:

I am writing in support of S.B. 229, which amends the prevailing wage legislation passed during the 1997 legislature (H.B.407). For the following reasons, I urge you to support S.B.229:

H.B.407 was an unfunded mandate:

The 1997 legislature passed H.B.407 without the addressing the funding necessary to cover the added costs. H.B.407, however well intentioned, has caused much grief to both school districts and bus contractors alike. It is important to realize that contractors don't pay the bill; the school districts and ultimately the taxpayers do. These added costs are being passed on to the schools.

Inequity between employees who perform the exact same service:

Establishing prevailing wage requirements in public contracts discourages privatization. Since school districts aren't subject to prevailing wage requirements themselves, this could logically lead to the schools finding it cheaper to operate their own bus systems simply due to an inequity in wages. What's good for the private sector is also good for the public sector as well. If the law is allowed to stand, it should be all or none.

What about CI75:

With the passage of CI75, a legal conundrum now exists between school transportation budgets and the prevailing wage legislation. What happens when the prevailing wage law increases transportation costs to the district, and the subsequent line-item budget dealing with these transportation increases is nixed by vote of the people?

Added costs to our schools and the taxpayers of Montana:

To sum up, equity between the public and private sector as well as efficient use of taxpayer dollars are at the heart of the issue. As the law now stands, employees of a private contractor are under prevailing wage legislation while school district employees, performing the exact same duties, are not.

As well, the schools have been issued one more unfunded directive. The 1997 legislature passed prevailing wage legislation but failed to fund the increase. Statewide, costs to the schools will be hundreds of thousands of dollars, and already strained schools budgets simply cannot afford another unfunded mandate.

Therefore, those of us involved with pupil transportation in Montana strongly urge you to vote yes on S.B. 229.

Sincerely,

Greg D. Beach
Vice President
Beach Transportation Company
825 Mount Ave.
Missoula, MT 59801

KARST STAGE, INC.

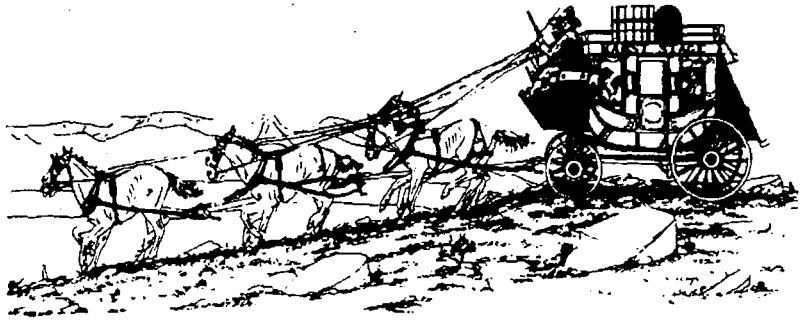
MAIN OFFICE

511 N. Wallace
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(406) 586-8567

FAX (406) 586-8312

OTHER LOCATIONS

Anaconda
Billings
Helena
West Yellowstone



"History is our Heritage . . . Service is our Pride."

SENATE LABOR & EMPLOYMENT

ENRIT NO. 6

DATE 1-28-99

BILL NO. SB229

January 26, 1999

To: Senator Keating and the Senate Labor and Employment Relations
Committee members:

I am writing to support SB229. As a private contractor providing home to school bus service to three school districts in Montana, I find the present wording of HB 407, (passed in the legislator in 1997), unacceptable.

It takes away the competitive issues of private sector vs public sector. The government has no right to tell us how we should bid a contract. Because of HB 407 all districts effected by the Jan 1, 1998 implementation date are paying more money to have the school bus contracts comply and that is not fair to the taxpayer who ultimately pays the bill. It is my responsibility to know what I need to pay my help in order to meet contract specifications and still be profitable. The employment market will dictate what is a fair wage to get the job done. This includes all paid positions which are required to get the school district contract, not just school bus drivers.

It is also unfair for the school districts to be exempt from the prevailing wage under HB407, but an outside contractor must meet state standards. This is a disadvantage or discriminates against the private sector when bidding a contract for school bus service.

Since, you now tell me how much I have to pay a driver, how long before you tell me how much I have to charge the school districts? Please remember that competition is the way to get the best price for service needed without interference from government.

Thank you for your consideration and time on this important issue. Please call me at 406 586 8567, voice mail 7, if you have any questions.

Sincerely,

Jerry Perkins
Owner

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 7

DATE 1-28-99

BILL NO. SB 229

January 26, 1998

Tom Keating
Chair, Senate Labor & Employment Committee
Helena Capitol
Helena, MT 59620

Dear Mr. Keating:

Please consider this a formal request to support SB 229 on behalf of school districts to exempt certain job classifications from the Little Davis Bacon Act prevailing wage requirements. Specifically, I am referring to "Food Service Worker", "Cook" and "Bus Driver". Which are classifications that sensibly school districts should be exempt from meeting the unreasonable wages. The justification for this request is logical and reasonable when you consider the source of funds that support the food service and the transportation programs.

We are completely dependent on you right now as we ask you to carry our requests to those who create and amend the laws that govern us. As you can imagine these are very serious issues to our district and many others around the state. **We ask that you make this a priority to give it your immediate attention.**

Under recent additions to the current law, our district faced the negative impacts of this law. With the prevailing wages for our region set unreasonably high, our lunch contractor was significantly impacted. Last Spring, we watched sorrowfully as our very successful lunch contractor was forced to resign the business she had worked so hard to build. In the mean time, we juggled with the difficult decision to either shut down the lunch program until legislation provides relief or adopt a program that would require financial assistance from other funds already laden with numerous liabilities. We swallowed our fear of losing our reserves and took the program on, as we realized the importance of filling the bellies of our children with nutritious meals.

As you are aware, the federal and the state government provide reimbursement rates for each lunch and breakfast meal served. That coupled with the student meal charges for "full pay" and "reduced priced" meals is intended to support the program. Currently, most districts already charge the full priced students as much as possible without jeopardizing participation in the program. Therefore, it is not feasible to raise meal prices, especially when you realize how difficult it is to explain to "full pay" parents why their budgets are burdened with the financial impact of this law.

Therefore, there must be an alternative to fund the meals. We have been told that the government will not increase their reimbursement rates to fulfill prevailing wage obligations. So it is very plain to see that school districts need support, either financially or otherwise. It is evident that financial support is not likely now, or in the future. Therefore, we are seeking the help of your committee to provide relief from the wage requirements imposed on our contractors.

With the prevailing wages applying also to transportation, bus contractors will be increasing their fees substantially around the state. This increase will be passed directly on to the local taxpayer as transportation costs are levied under an independent mill. As politicians I'm sure that you understand how resistant the community is to increased mill levies. This often times results in opposition to local schools, which is just the reverse of what districts strive to achieve.

As school administrators we easily see the opposition to this bill. However, we have an obligation to the taxpayers to be fiscally responsible as we spend their money. By passing SB 229, it will allow us the opportunity to make wise financial decisions as to how to operate the Food Service and Transportation programs. It would allow us the opportunity to assess our programs and carry out responsibilities to each program, as well as to the students, employees and community.

As capable school officials please give us the autonomy to make the financial decisions necessary to effectively operate AND be accountable to employees and taxpayers alike!

I thank you for attending to this matter. If I can be of any assistance to you, please do not hesitate to contact us at 363-2280.

Sincerely,

Beckie Christiaens
Business Manager
Hamilton School District

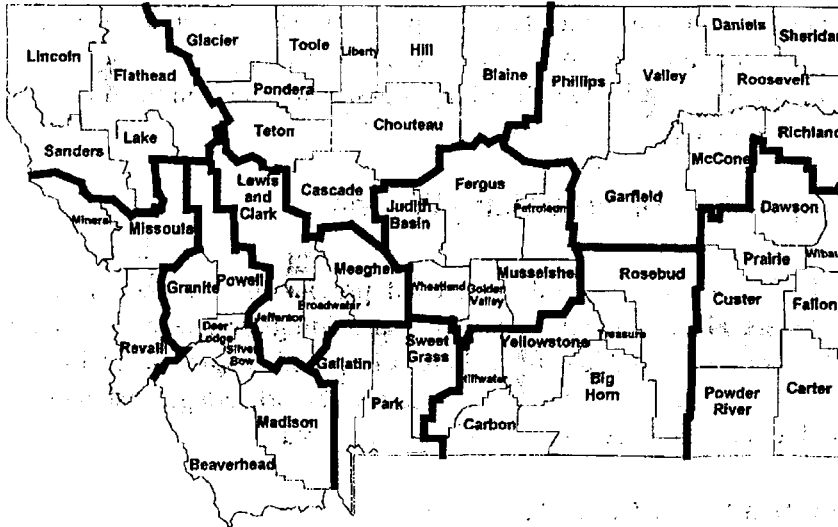
Duane Lyons
Superintendent
Hamilton School District

c Hamilton Board of Trustees
 Lance Melton, MSBA

benefits are to be computed on an hours-paid basis.

F. Prevailing Wage Districts

Montana counties are aggregated into 10 districts for the purpose of prevailing wage. A map showing these districts follows:



G. Computing Travel Benefits

Travel pay, for the purposes of public works projects, shall be determined by measuring the road miles over the shortest practical maintained route from the county courthouse of the following cities or the employee's home, whichever is closer, to the center of the job. Each city shall be considered the point of origin only for jobs within that district (as shown below):

District 1 - Kalispell: includes Flathead, Lake, Lincoln, and Sanders counties

District 2 - Missoula: includes Mineral, Missoula, and Ravalli counties

District 3 - Butte: includes Beaverhead, Deer Lodge, Granite, Madison, Powell, and Silver Bow counties

District 4 - Great Falls: includes Blaine, Cascade, Chouteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole counties

District 5 - Helena: includes Broadwater, Jefferson, Lewis and Clark, and Meagher counties

District 6 - Bozeman: includes Gallatin, Park, and Sweet Grass counties

District 7 - Lewistown: includes Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, and Wheatland counties

District 8 - Billings: includes Big Horn, Carbon, Rosebud, Stillwater, Treasure, and Yellowstone counties

DATE 1-28-99

[illegible]

DATE 1-28-99

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: SB229, SB218

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
JACK FISHER	494-5854	LOCAL 233 IBEW	218		X
DAVID RACHOR	549-3932	LOCAL 768 IBEW	218		X
John Check	288-3251	DRUMMOND SCHOOLS	229	X	
Craig Brewington	722-5626	Missoula S.D. #4	229	X	
Darrell HOLZER	442-1700	MT. ST. AFL-CIO	229 218		X
Carl Schweitzer	457-1334	Am. Ent Ass'n	218		X
Jim WOLFE	443-2409	POLAR ELECTRIC	218		X
DON WALDRON	443-2629	MT Rural Ed Ass'n	229	X	
LANCAMELTON	442-2180	MONTANA SCHOOL BOARDS ASSOC.	229	X	
Bill Qualls	431-5333	Electrical Cont.	218		X
Don Henry	248-9119	IBEW	218		X
Scott D Hudson	248-9119	IBEW	218		X
DOUGLAS H NEIL	449-2823	MSFA	218		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 1-28-99

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: SB229, SB218

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Pat Clinch	441-2523	MSCPFF	218		X
Phil Campbell		MEA & MFT	229		X
Gary Pemble	449-7173	MT. Electrical JATC	218		X
Dick Swingley	727-8070	GREAT FALL FIRE DEPT	218		X
Ronda Carpenter	899-5659	Mt Housing Providers	218	X	
Jerry Perkins	586-8567	Union #7 Krest Stage	229	X	
R. Perry Eskridge	(406) 444-3737	State Board of Electricians	218		X
Joe Dwyer	406 248-2658	TEAMSTERS Union	218 229		X
Terry Phillips	444-2653	STATE Fire MARSHAL	218 218		International
Duane L. Mellinger	866-3253	IBEW 233	218		X
Robin French	449-0381	Constructing workers	218		X
Curtis F. Sweet	452-1852	IBEW 233	218		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 1-28-99

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: SB 229, SB 218

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
GENE FENDERSON	442-1441	MJH & Hc	218 229		X X
Jerry Ousill		Building Trades	218 229		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on February 9, 1999 at
3:18 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Tom Keating, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Vicki Cocchiarella (D)
Sen. Alvin Ellis (R)
Sen. Bob Keenan (R)
Sen. Walter McNutt (R)
Sen. Bill Wilson (D)

Members Excused: Sen. Dale Berry (R)

Members Absent: None.

Staff Present: Gilda Clancy, Committee Secretary
Eddye McClure, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 365, 2/2/1999; SB 305,
2/2/1999

Executive Action: SB 202, SB 218, SB 223, SJR 6,
SB 229, SB 245, SB 242

believes there are a lot of employers in the state who would be offended by the language in this bill.

Substitute Motion/Vote: SEN. MCNUTT made a substitute motion that SJR 6 BE TABLED. Substitute motion carried with SEN. BARTLETT, SEN. COCCHIARELLA and SEN. WILSON voting no.

EXECUTIVE ACTION ON SB 229

Motion: SEN. THOMAS moved that SB 229 DO PASS.

Discussion: SEN. THOMAS explained this legislation exempts the school district from using prevailing wage for public contracts such as school lunch programs and transportation. It does not affect any construction work. The amendment takes out any question of this bill affecting construction work relating to prevailing wage. EXHIBIT(4)

Motion/Vote: SEN. THOMAS moved that THE AMENDMENT BE ADOPTED. Motion failed unanimously.

SEN. BARTLETT mentioned this takes schools out of coverage of paying prevailing wage on non-construction services. As we all know, there was a working committee from 1995 to 1997 which put together HB 407 and came to the legislature with that bill to clarify and reduce the number of services which had to be covered by prevailing wage. The School Board's Association participated in that working committee and testified in support of HB 407 which put these three words into law. The people they used to contract with are part of the survey for prevailing wage purposes. When Mr. Karst either didn't get the survey or turn it in, he testified he went to the Department of Labor & Industry to research and analyze and had his rates included. Then the rate dropped from \$11 and some cents per hour to \$7.90. She said maybe we should investigate Mr. Karst for minimum wage violations. Really, the school districts are saying they didn't mean 'me'. SEN. BARTLETT attested this is not a good lesson for our children. They had ample opportunity to protest. In past sessions when there was something they didn't like, they came in with legislation which affects the whole state.

SEN. THOMAS conveyed there has been some confusion about the working group from the prior session legislation. It is his understanding the School Board's Association does not agree that they were involved in that working group.

SEN. BARTLETT asked if they are denying that they had the opportunity to be involved?

SEN. THOMAS said he couldn't answer that question.

Substitute Motion: **SEN. WILSON** made a substitute motion that **SB 229 BE TABLED**. Motion failed with **SEN. BARTLETT** and **SEN. WILSON** voting 'yes'.

Vote: Motion that **SB 229 DO PASS AS AMENDED** carried 7-2.

EXECUTIVE ACTION ON SB 245

Motion: **SEN. KEENAN** moved that **SB 245 AND THE AMENDMENT DO PASS**. **EXHIBIT(5)**

Discussion: **SEN. COCCHIARELLA** voiced she felt the amendment is good but the bill scares her a lot. She has seen people who work in the home health provider care profession who are quite often uneducated, but sometimes not. Sometimes it is the only job they can get and in some cases she foresees these people being taken advantage of. She doesn't object to this concept but she doesn't want to see people who are already underpaid being taken advantage of by calling them a home companion.

Vote: Motion that **THE AMENDMENT BE ADOPTED** carried unanimously.

Discussion: **SEN. BARTLETT** asked **Eddye McClure** if she had a copy of the federal definition. **EXHIBIT(6)**

Vote: Motion that **SB 245 DO PASS AS AMENDED** carried unanimously.

EXECUTIVE ACTION ON SB 242

Discussion: **Eddye McClure** handed out amendments which the sponsor of the bill, **SEN. KEN MILLER** requested. **EXHIBIT(7)**

Amendments to Senate Bill No. 229
1st Reading Copy

Requested by Senator Fred Thomas

SENATE LABOR & EMPLOYMENT
SENATOR NO 4
DATE 2-9-99
BILL NO. SB229

For the Senate Labor and Employment Relations Committee

Prepared by Eddye McClure
February 5, 1999

1. Title, line 4 and line 5.

Strike: "AMENDING" through "CONTRACTS;"

2. Title, page 1, line 6 through line 13.

Following: "CLASSIFICATIONS;" on line 6

Strike: remainder of line 6 through "CIRCUMSTANCES;" on line 13

Strike: "SECTIONS" on line 13

Insert: "SECTION"

Following: "18-2-401,"

Strike: "18-2-407, 18-2-411, AND 18-2-422,"

3. Page 4, line 2 through page 5, line 20.

Strike: section 2 through section 4 in their entirety

Renumber: subsequent section

- END -

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

MOTION: Table

[illegible]

[illegible]



SENATE STANDING COMMITTEE REPORT

February 10, 1999

Page 1 of 1

Mr. President:

We, your committee on Labor and Employment Relations report that Senate Bill 229 (first reading copy -- white) **do pass as amended.**

Signed:


Senator Tom Keating, Chair

And, that such amendments read:

1. Title, line 4 and line 5.

Strike: "AMENDING" through "CONTRACTS;"

2. Title, page 1, line 6 through line 13.

Following: "CLASSIFICATIONS;" on line 6

Strike: remainder of line 6 through "CIRCUMSTANCES;" on line 13

Strike: "SECTIONS" on line 13

Insert: "SECTION"

Following: "18-2-401,"

Strike: "18-2-407, 18-2-411, AND 18-2-422,"

3. Page 4, line 2 through page 5, line 20.

Strike: section 2 through section 4 in their entirety

Renumber: subsequent section

- END -

Committee Vote:

Yes 7, No 2.



331013SC.srf

INDEX TO BILLS IN COMMITTEE

June 30, 1999

- Committee: (H) Business and Labor -

01:05 PM

- SB 189** **SPONSOR:** Berry, Dale **SHORT TITLE:** Revise certain licensing laws applicable to real estate brokers and salespersons
 REFERRED ON: 02/16/1999 **HEARD ON:** 03/05/1999
 EXECUTIVE ACTION: 03/09/1999 Bill Concurred as Amended -- VOTE: 18 - 0
 FINAL DISPOSITION 03/25/1999 Chapter Number Assigned
-
- SB 210** **SPONSOR:** Lynch, J.D. **SHORT TITLE:** Clarify the practice of home inspections
 REFERRED ON: 02/16/1999 **HEARD ON:** 03/03/1999
 EXECUTIVE ACTION: 03/03/1999 Bill Concurred as Amended -- VOTE: 12 - 4
 FINAL DISPOSITION 04/10/1999 Chapter Number Assigned
-
- SB 217** **SPONSOR:** Miller, Ken **SHORT TITLE:** Allow electrical apprentice to take license exam
 REFERRED ON: 02/16/1999 **HEARD ON:** 03/10/1999
 EXECUTIVE ACTION: 03/25/1999 Bill Concurred as Amended -- VOTE: 17 - 1
 FINAL DISPOSITION 04/22/1999 (S) Died in Process
-
- SB 227** **SPONSOR:** Hertel, John **SHORT TITLE:** Clarify definition of small telecommunications provider
 REFERRED ON: 02/16/1999 **HEARD ON:** 03/09/1999
 EXECUTIVE ACTION: 03/09/1999 Bill Concurred -- VOTE: 18 - 0
 FINAL DISPOSITION 03/24/1999 Chapter Number Assigned
-
- SB 229** **SPONSOR:** Thomas, Fred **SHORT TITLE:** Exempt certain school districts from nonconstruction services job classification
 REFERRED ON: 02/16/1999 **HEARD ON:** 03/10/1999
 EXECUTIVE ACTION: 03/11/1999 Bill Concurred -- VOTE: 10 - 8
 FINAL DISPOSITION 04/29/1999 Chapter Number Assigned
-
- SB 234** **SPONSOR:** Thomas, Fred **SHORT TITLE:** Revise work comp laws to allow for case management
 REFERRED ON: 02/16/1999 **HEARD ON:** 03/08/1999
 TABLED ON: 03/08/1999
 FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee
-
- SB 245** **SPONSOR:** Waterman, Mignon **SHORT TITLE:** Adopt wage and hour exemption for home companions for elderly and disabled
 REFERRED ON: 02/16/1999 **HEARD ON:** 03/10/1999
 EXECUTIVE ACTION: 03/11/1999 Bill Concurred -- VOTE: 18 - 0
 FINAL DISPOSITION 03/27/1999 Chapter Number Assigned
-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By CHAIRMAN BRUCE SIMON, on March 10, 1999 at
8:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Rep. Bruce Simon, Chairman (R)
Rep. Bob Pavlovich, Vice Chairman (D)
Rep. Paul Sliter, Vice Chairman (R)
Rep. Joe Barnett (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. David Ewer (D)
Rep. Carol C. Juneau (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Gay Ann Masolo (R)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)

Members Excused: None.

Members Absent: Rep. Rod Bitney (R)

Staff Present: Stephen Maly, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 217, SB 229, SB 245, SB
305, SB 466 (3/3/99), 4/2/1999
Executive Action: SB 245, SB 466, SB 103, SB
272, SB 113

Closing by Sponsor: Senate Waterman closed SB 245.
{Tape : 1; Side : B; Approx. Time Counter : 23 - 45}

EXECUTIVE ACTION ON SB 245

Motion/Vote: REP. PAVLOVICH moved that SB 245 BE CONCURRED IN.
Motion carried unanimously.
{Tape : 1; Side : B; Approx. Time Counter : 45 - 94}

HEARING ON SB 217

Opening Statement by Sponsor: Senator Miller, SD 11 introduced SB 217.
{Tape : 1; Side : B; Approx. Time Counter : 94 - 126}

Proponents' Testimony: Mark Makie, Apprentice and Training Div. MT Dept of Labor EXHIBIT(10)
{Tape : 1; Side : B; Approx. Time Counter : 126 - 186}

Opponents' Testimony: Keith Allen, International Brotherhood of Electrical Workers. EXHIBIT(3)
{Tape : 1; Side : B; Approx. Time Counter : 186 - 210}

Questions from Committee Members and Responses: Reps. Squires, Ewer, Krenzler, Tuss and Simons question witnesses.
{Tape : 1; Side : B; Approx. Time Counter : 210 - 500}

Closing by Sponsor: Senator Miller closed SB 217. Rep. Noenig to carry bill on house floor.
{Tape : 2; Side : A; Approx. Time Counter : 0 - 46}

HEARING ON SB 229

Opening Statement by Sponsor: Senator Thomas, SD 31 introduced SB 229.
{Tape : 2; Side : A; Approx. Time Counter : 46 - 140}

Proponents' Testimony: Lance Melton, Montana School Board Assn. EXHIBIT(5)
{Tape : 2; Side : A; Approx. Time Counter : 140 - 290}

Don Beaver, Big Sky Bus Lines. EXHIBIT(6)
{Tape : 2; Side : A; Approx. Time Counter : 290 - 310}

HOUSE COMMITTEE ON BUSINESS AND LABOR

March 10, 1999

PAGE 4 of 8

Don Waldron, Montana Rural Educators EXHIBIT(7) EXHIBIT(8)

{Tape : 2; Side : A; Approx. Time Counter : 310 - 370}

Opponents' Testimony: Rep. Ewer, H D 53

{Tape : 2; Side : A; Approx. Time Counter : 370 - 448}

Phil Campbell, AFL-CIO EXHIBIT(9)

{Tape : 2; Side : A; Approx. Time Counter : 448 - 500}

{Tape : 2; Side : B; Approx. Time Counter : 0 - 46}

Pat Mitchell, Glendive School Board. EXHIBIT(4)

{Tape : 2; Side : B; Approx. Time Counter : 46 - 148}

Gene Fenderson, Montana Joint Heavy and Hiway

{Tape : 2; Side : B; Approx. Time Counter : 148 - 202}

Darell Holzer, AFL-CIO

{Tape : 2; Side : B; Approx. Time Counter : 202 - 248}

Questions from Committee Members and Responses: Reps. Matthews, Squires and Simon question witnesses.

{Tape : 2; Side : B; Approx. Time Counter : 248 - 506}

Closing by Sponsor: Senator Thomas closed SB 229.

{Tape : 3; Side : A; Approx. Time Counter : 0 - 92}

HEARING ON SB 305

Opening Statement by Sponsor: Senator Thomas, SD 31 introduced SB 305.

{Tape : 3; Side : A; Approx. Time Counter : 92 - 115}

Proponents' Testimony: Mike Foster, Montana Contractors Assn.

{Tape : 3; Side : A; Approx. Time Counter : 115 - 194}

Paul Thompson, Gillen Const Co. Butte, MT

{Tape : 3; Side : A; Approx. Time Counter : 194 - 228}

Ed Maronick, Maronick Const. Co.

{Tape : 3; Side : A; Approx. Time Counter : 228 - 259}

Opponents' Testimony: Darell Holzer, AFL-CIO

{Tape : 3; Side : A; Approx. Time Counter : 259 - 314}

Gene Fenderson, MT Joint Heavy and Hiway

{Tape : 3; Side : A; Approx. Time Counter : 314 - 413}

DATE 3/10/99
SB 229

To: Representative Bruce Simon, House Business & Labor Committee
From: MT. School District - Food Service, Bus Drivers, Custodial Employees
Subject: SB 229
Date: March 10, 1999

SB 229 is a m
Services, an e
As an elected
before you ca:
to determine if
By separating
House Busine.

Exhibit # 4
From PAT MITCHELL
The full exhibit is available from:
Montana Historical Society Archives
225 North Roberts
PO Box 201201
Helena, MT 59602-1201
Phone: (406) 444-4775

ransportation, and Custodial
effects of repealing HB 407
alone have the responsibility
Jilly, we are confident the
on SB 229.

FACTS:

HB 407 - Passed in the 1997 Legislative Session, set a reasonable level of compensation for private contractors when bidding on publicly funded school Food, Transportation, and Custodial Services.
HB 407 - Closed the gap between what a private business contractor, and a school district must provide by Mt. law to service employees, when those employees are publicly funded.

COST COMPARISON PREVAILING WAGE & SCHOOL DISTRICTS

An hourly cost comparison between District 10 - Prevailing Wage Employees, and School District Employees, The example used is a 5 year employee. The documentation is from the Mt Dept. of Labor and Industry - Research and Analysis Bureau and School District Business Office.

District 10 - Prevailing Wage Rates 5 year Employee - Food Service Worker - Aver. 5hrs Daily

Hourly Rate	Health & Welfr.	Pension	Vacations	Holidays	Total
\$6.16	.83	.14	.25	N/A	\$7.38
\$6.95	\$1.30 31 @ 4.6	.47 @ pers 6.7	.40 @ 5.8	.21	9.33 - 8.34 .

School District - 5 year Employee - Food Service Worker Difference 1.95 - .96

* Many Schools also offer group participation in Health, Dental, Vision, and Life Insurance.

FACTS VS MAYBE'S - Q. & A. about school food & transportation services.

1. Q. Are Mt. School's - Food & Transportation Programs in Good Financial Condition?

A. Yes, a majority are self-sustaining, A majority have a modest surplus at years end.

2. Q. Will contracting out School Services put more money into our schools?

A. Maybe! & Maybe not! Will a private contractor after bidding a food service contract for(example)\$160,000 a year, return any surplus, to buy computers for the classroom?

3. Q. What are the savings in real \$\$\$ to School Districts who have contracted School Services? A. Nothing has been documented!

Who do people believe? Source: Montana School Board Association's January edition of "On Board"

Who is seen as credible? Public relations research shows these people to be the most credible source of information about schools and school districts.

1. School custodians - 2. Bus drivers - 3. Food service employees - 4. School secretary - 5. Teachers

That you are considering our position against SB 229!



To: Representative Simon, Chairman
House Business and Labor Committee

From: Lance Melton, General Counsel, MSBA *Sand*

Subject: Senate Bill 229

Date: March 10, 1999

EXHIBIT 5
DATE 3/10/99
SB 229

Senate Bill 229 seeks to relieve school districts from a significant unfunded mandate passed in the last session. The Legislature passed House Bill 407 last session upon the contention of those supporting the bill that it was doing nothing more than codifying a long-standing attorney general's opinion. Although that contention was true, the attorney general's opinion was not only long-standing, but long ignored by everyone responsible for complying with it and enforcing it.

The Legislature passed House Bill 407 last session with a fiscal note that identified a fiscal impact of \$0.00. School districts have found, however, that the law created by House Bill 407 has dramatically increased costs for those districts who use private industry for their service-related occupations like bus drivers and food service workers. These additional costs are threatening the viability of the services these school districts are currently providing to the children.

The Attorney General's Opinion from 1988:

In 1988, then-Attorney General Mike Greely issued an opinion affirming that the prevailing wage laws applied to all service occupations, without any exceptions. Although the law had provided for years that service occupations were covered by the prevailing wage laws, that coverage was studiously ignored – by state agencies like the Department of Public Health and Human Services that this committee exempted from the laws earlier this session, by school districts, and, last but not least, by the Department of Labor as well.

Comparisons of Senate Bill 229 to Senate Bill 77, Exempting DPHHS from Service Occupations:

This Committee previously considered and passed Senate Bill 77, introduced by Senator Bob Keenan. That bill exempted the Department of Public Health and Human Services from the payment of prevailing wages on the services added under House Bill 407 last session. Much of the rationale for that exemption was contained in the fiscal note, which identified that the DPHHS had not been following the law created by the 1988 attorney general's opinion, and was faced with significant increased costs if the prevailing wage laws were to be applicable to such contracts.

In addition to the unplanned costs identified in Senate Bill 77, much of the rationale for exempting the health service occupations contracted by DPHHS was based on the fact that payment of such services are based on federal formulas that provide finite resources to pay for the costs of those services. This is nearly identical to the process by which school districts financially support their transportation and food service programs, both of which are largely funded with either state or federal funds that are intended to provide the lion's share of costs.

Federal and State Funded School Districts Services Subject to Prevailing Wage Laws:

Section 20-10-141, MCA, for example, provides a maximum state payment of 85 cents per bus mile for a school bus with a rated capacity of not more than 45 passenger seating positions. Regardless of the costs associated

with the provision of transportation, this is the maximum payment that the state will provide. With respect to food service programs, section 20-10-205, MCA, provides a strict process for submitting claims for federal reimbursement of the costs of providing free and reduced lunches to low income children. The reimbursement for such costs is based on a federal formula over which school districts have little if any control. There are a tremendous number of children in our schools that qualify for the free and reduced lunch program, as evidenced in the attached sheet from OPI. In the Libby School District, for example, a full 41% of the children in that school system qualify for free or reduced lunch. Correspondingly, the funds to which the Libby School District has access are based on federal law for each of these students.

The Exemption of Schools from the Service Occupations Added Last Session:

House Bill 407 from last session has wreaked havoc with Montana's public schools. By adding the service occupations to the law and allowing the wage rates to be set on the basis of wage rate districts that had been drafted largely with the construction industry in mind in the mid-1980's, the new law created an unfunded liability and mandate for virtually every school district in the state that contracts out any of its services. The two areas hit the hardest were the food service programs and the bus contracts that are subject to finite federal and state resources as identified above.

The fact is that the law created by House Bill 407 simply does not work for school districts. School districts from throughout the state have found that the new law has drastically increased the costs of operation without any means of providing for such increased costs. There are compelling examples of the devastating effect of the new law on school district programs which are referenced in the attached letters of support for Senate Bill 229. Among those examples, the following are particularly compelling:

1. The Libby School District, for example, has been hit so hard by the new law and the inflated wage rates deduced by the Department of Labor that it will have no other choice but to terminate its contracted school lunch program if Senate Bill 229 fails.
2. The Bozeman School District has found that the application of the prevailing wage laws to its existing contract for bus services increased yearly costs by \$56,000. The increased costs came without any additional funds.
3. The Missoula School District, which has long contracted with Beech Transportation, one of the most successful private bus companies in the state, has identified that the costs of its bus services will increase substantially when its current contract expires.

Summary:

Senate Bill 229 does not seek to cut the wages of any workers who are providing services on behalf of school districts. In fact, Senate Bill 229 seeks to maintain the viability of the jobs created by virtue of school districts' contracts with private industry, and further seeks to avoid the inevitable layoffs that will occur if this bill fails and school districts are forced to terminate contracts as a result. Without Senate Bill 229, many school districts will have to look at other options for financing their transportation and food service programs. Many will likely look at terminating their relationship with private industry and hiring in-house where the minimum, not the higher prevailing wage laws apply.

The prevailing wage laws were designed to provide a livable wage for workers, not to discourage public agencies from contracting with private industry for services. Senate Bill 229 deserves your strong support, and MSBA appreciates your consideration of this bill. If you have any questions, I will be available to provide any information I have.

Thanks.

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Co Number	County	Legal Entity	LeName	Enroll Eligible	Level	Metrop Statistical Category	Oct 98 Percent Eligible	F & R Lunch Category	F-Rate Discount Percentage
01	Beaverhead	0005	Dillon Elem	853	EL	RURAL3	27%	D	60%
01	Beaverhead	0006	Beaverhead County H S	540	HS	RURAL3	7%	E	50%
01	Beaverhead	0009	Lima K-12 Schools	106	K12	RURAL3	47%	C	70%
02	Big Horn	0021	Pryor Elem	40	EL	RURAL3	88%	A	90%
02	Big Horn	0022	Community Elem	14	EL	RURAL3	0%	F	25%
02	Big Horn	0023	Hardin Elem	1,208	EL	RURAL3	67%	B	80%
02	Big Horn	0025	Lodge Grass Elem	349	EL	RURAL3	74%	B	80%
02	Big Horn	0026	Wyola Elem	43	EL	RURAL3	100%	A	90%
02	Big Horn	1189	Hardin H S	417	HS	RURAL3	50%	B	80%
02	Big Horn	1190	Lodge Grass H S	198	HS	RURAL3	41%	C	70%
02	Big Horn	1214	Plenty Coups H S	75	HS	RURAL3	83%	A	90%
02	Big Horn	9028	North Cheyenne Trib Elem	170	EL	RURAL3	100%	A	90%
02	Big Horn	9047	St Charles Mission	132		RURAL3	76%	A	90%
02	Big Horn	9174	Prt Eagle Catholic Sch	136		RURAL3	89%	A	90%
02	Big Horn	9246	Northern Cheyenne Trib HS	81	HS	RURAL3	100%	A	90%
03	Blaine	0028	Chinook Elem	241	EL	RURAL3	34%	D	60%
03	Blaine	0029	Chinook H S	211	HS	RURAL3	15%	E	50%
03	Blaine	0030	Harlem Elem	465	EL	RURAL3	82%	A	90%
03	Blaine	0031	Harlem H S	160	HS	RURAL3	73%	B	80%
03	Blaine	0034	Zurich Elem	52	EL	RURAL3	29%	D	60%
03	Blaine	0044	Turner Elem	64	EL	RURAL3	42%	C	70%
03	Blaine	0045	Turner H S	34	HS	RURAL3	35%	C	70%
03	Blaine	1213	Hays-Lodge Pole K-12 Schls	285	K12	RURAL3	95%	A	90%
03	Blaine	1216	North Harlem Colony Elem	8	EL	RURAL3	100%	A	90%
03	Blaine	9176	St Paul Mission Schl	130		RURAL3	93%	A	90%
04	Broadwater	0055	Townsend K-12 Schools	728	K12	RURAL3	30%	D	60%
05	Carbon	0056	Red Lodge Elem	289	EL	RURAL3	33%	D	60%
05	Carbon	0057	Red Lodge H S	203	HS	RURAL3	6%	E	50%
05	Carbon	0059	Bridger K-12 Schools	231	K12	RURAL3	35%	C	70%
05	Carbon	0060	Joliet Elem	180	EL	RURAL3	22%	D	60%
05	Carbon	0061	Joliet H S	114	HS	RURAL3	12%	E	50%
05	Carbon	0063	Jackson Elem	11	EL	RURAL3	18%	E	50%
05	Carbon	0064	Luther Elem	37	EL	RURAL3	19%	E	50%
05	Carbon	0069	Roberts K-12 Schools	147	K12	RURAL3	50%	B	80%
05	Carbon	0070	Boyd Elem	17	EL	RURAL3	24%	D	60%
05	Carbon	0071	Fromberg Elem	117	EL	RURAL3	46%	C	70%

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Co. Number	County	Legal Entity	School Name	Enroll. Eligible	Level	Metrop. Statistical Category	Oct 98 Percent Eligible	Fy & R Lunch Category	F-Rate Discount Percentage
05	Carbon	0072	Fromberg H S	82	HS	RURAL3	33%	D	60%
05	Carbon	0073	Edgar Elem	22	EL	RURAL3	64%	B	80%
05	Carbon	0076	Belfry K-12 Schools	119	K12	RURAL3	35%	C	70%
06	Carter	0087	Ekalaka Elem	109	EL	RURAL3	51%	B	80%
06	Carter	0097	Carter County H S	62	HS	RURAL3	47%	C	70%
07	Cascade	0098	Great Falls Elem	8,032	EL	URBAN1	39%	C	70%
07	Cascade	0099	Great Falls H S	3,908	HS	URBAN1	16%	E	50%
07	Cascade	0101	Cascade Elem	223	EL	RURAL3	31%	D	60%
07	Cascade	0102	Cascade H S	190	HS	RURAL3	24%	D	60%
07	Cascade	0104	Centerville Elem	232	EL	RURAL3	29%	D	60%
07	Cascade	0105	Centerville H S	100	HS	RURAL3	24%	D	60%
07	Cascade	0112	Belt Elem	227	EL	RURAL3	44%	C	70%
07	Cascade	0113	Belt H S	129	HS	RURAL3	25%	D	60%
07	Cascade	0118	Simms H S	186	HS	RURAL3	41%	C	70%
07	Cascade	0127	Vaughn Elem	142	EL	RURAL3	61%	B	80%
07	Cascade	0131	Ulm Elem	115	EL	UFRNG2	33%	D	60%
07	Cascade	1225	Sun River Valley Elem	266	EL	RURAL3	40%	C	70%
07	Cascade	9180	Our Ldy Of Lrds Schl	225		RURAL3	23%	D	60%
07	Cascade	9256	Blessed Trinity Schl	247		RURAL3	13%	E	50%
08	Chouteau	0133	Fort Benton Elem	259	EL	RURAL3	52%	B	80%
08	Chouteau	0134	Fort Benton H S	186	HS	RURAL3	28%	D	60%
08	Chouteau	0137	Big Sandy Elem	158	EL	RURAL3	27%	D	60%
08	Chouteau	0138	Big Sandy H S	76	HS	RURAL3	22%	D	60%
08	Chouteau	0145	Highwood Elem	92	EL	RURAL3	40%	C	70%
08	Chouteau	0146	Highwood H S	45	HS	RURAL3	36%	C	70%
08	Chouteau	0153	Geraldine Elem	84	EL	RURAL3	45%	C	70%
08	Chouteau	0154	Geraldine H S	64	HS	RURAL3	28%	D	60%
09	Custer	0172	Miles City Elem	1,084	EL	RURAL3	29%	D	60%
09	Custer	0173	Kircher Elem	52	EL	RURAL3	31%	D	60%
09	Custer	0187	Kinsey Elem	44	EL	RURAL3	30%	D	60%
09	Custer	9187	Sacred Heart School	53		RURAL3	26%	D	60%
10	Daniels	0194	Scobey K-12 Schools	302	K12	RURAL3	18%	E	50%
10	Daniels	0196	Peerless K-12 Schools	48	K12	RURAL3	48%	C	70%
10	Daniels	0200	Flaxville K-12 Schools	45	K12	RURAL3	42%	C	70%
11	Dawson	0206	Glendive Elem	875	EL	RURAL3	35%	C	70%
11	Dawson	0207	Dawson County H S	519	HS	RURAL3	18%	E	50%

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Co. Number	County	Legal Entity	LeName	Enroll Eligible	Level	Metrop Statistical Category	Oct 98 Percent Eligible	F&R Lunch Category	F-Rate Discount Percentage
11	Dawson	0227	Richey Elem	54	EL	RURAL3	30%	D	60%
11	Dawson	0228	Richey H S	43	HS	RURAL3	30%	D	60%
12	Deer Lodge	0236	Anaconda Elem	1,078	EL	RURAL3	40%	C	70%
12	Deer Lodge	0237	Anaconda H S	570	HS	RURAL3	15%	E	50%
13	Fallon	0244	Baker K-12 Schools	542	K12	RURAL3	20%	D	60%
13	Fallon	0256	Plevna K-12 Schools	125	K12	RURAL3	22%	D	60%
14	Fergus	0258	Lewistown Elem	959	EL	RURAL3	35%	C	70%
14	Fergus	0259	Fergus H S	548	HS	RURAL3	18%	E	50%
14	Fergus	0264	Deerfield Elem	2	EL	RURAL3	100%	A	90%
14	Fergus	0268	Grass Range Elem	84	EL	RURAL3	49%	C	70%
14	Fergus	0269	Grass Range H S	58	HS	RURAL3	40%	C	70%
14	Fergus	0272	King Colony Elem	8	EL	RURAL3	100%	A	90%
14	Fergus	0273	Moore Elem	56	EL	RURAL3	34%	D	60%
14	Fergus	0274	Moore H S	42	HS	RURAL3	17%	E	50%
14	Fergus	0280	Roy K-12 Schools	85	K12	RURAL3	44%	C	70%
14	Fergus	0281	Denton Elem	102	EL	RURAL3	33%	D	60%
14	Fergus	0282	Denton H S	56	HS	RURAL3	23%	D	60%
14	Fergus	0288	Spring Creek Colony Elem	10	EL	RURAL3	100%	A	90%
14	Fergus	0291	Winifred K-12 Schools	157	K12	RURAL3	36%	C	70%
14	Fergus	1218	Ayers Elem	13	EL	RURAL3	100%	A	90%
15	Flathead	0307	Deer Park Elem	200	EL	RURAL3	6%	E	50%
15	Flathead	0309	Swan River Elem	140	EL	RURAL3	25%	D	60%
15	Flathead	0310	Kalispell Elem	2,831	EL	RURAL3	34%	D	60%
15	Flathead	0311	Flathead H S	2,787	HS	RURAL3	15%	E	50%
15	Flathead	0312	Columbia Falls Elem	1,616	EL	RURAL3	44%	C	70%
15	Flathead	0313	Columbia Falls H S	922	HS	RURAL3	23%	D	60%
15	Flathead	0317	Cayuse Prairie Elem	194	EL	RURAL3	25%	D	60%
15	Flathead	0320	Helena Flats Elem	186	EL	RURAL3	33%	D	60%
15	Flathead	0323	Kila Elem	131	EL	RURAL3	50%	B	80%
15	Flathead	0324	Smith Valley Elem	155	EL	RURAL3	43%	C	70%
15	Flathead	0327	Somers Elem	457	EL	RURAL3	36%	C	70%
15	Flathead	0330	Bigfork Elem	568	EL	RURAL3	23%	D	60%
15	Flathead	0331	Bigfork H S	388	HS	RURAL3	19%	E	50%
15	Flathead	0334	Whitefish Elem	1,345	EL	RURAL3	22%	D	60%
15	Flathead	0335	Whitefish H S	649	HS	RURAL3	7%	E	50%
15	Flathead	0339	Evergreen Elem	713	EL	RURAL3	56%	B	80%

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Co Number	County	Legal Entity	LeName	Enroll Eligible	Level	Metrop Statistical Category	Oct 98 Percent Eligible	F&R Lunch Category	F-Rate Discount Percentage
15	Flathead	0341	Marion Elem	117	EL	RURAL3	35%	C	70%
15	Flathead	0342	Olney-Bissell Elem	91	EL	RURAL3	14%	E	50%
15	Flathead	1223	West Glacier Elem	56	EL	RURAL3	21%	D	60%
15	Flathead	9011	Trinity Lutheran School	165		RURAL3	18%	E	50%
15	Flathead	9196	St Matthews School	161		RURAL3	16%	E	50%
16	Gallatin	0347	Manhattan Elem	319	EL	RURAL3	27%	D	60%
16	Gallatin	0348	Manhattan H S	209	HS	RURAL3	22%	D	60%
16	Gallatin	0350	Bozeman Elem	2,962	EL	RURAL3	21%	D	60%
16	Gallatin	0351	Bozeman H S	1,794	HS	RURAL3	7%	E	50%
16	Gallatin	0354	Willow Creek Elem	63	EL	RURAL3	52%	B	80%
16	Gallatin	0355	Willow Creek H S	23	HS	RURAL3	43%	C	70%
16	Gallatin	0360	Three Forks Elem	331	EL	RURAL3	28%	D	60%
16	Gallatin	0361	Three Forks H S	151	HS	RURAL3	13%	E	50%
16	Gallatin	0363	Monforton Elem	186	EL	RURAL3	40%	C	70%
16	Gallatin	0364	Gallatin Gateway Elem	151	EL	RURAL3	28%	D	60%
16	Gallatin	0368	Belgrade Elem	1,294	EL	RURAL3	25%	D	60%
16	Gallatin	0369	Belgrade H S	703	HS	RURAL3	10%	E	50%
16	Gallatin	0374	West Yellowstone K-12	242	K12	RURAL3	26%	D	60%
16	Gallatin	9054	Manhattan Christian	122	HS	RURAL3	13%	E	50%
16	Gallatin	9199	Manhattan Christian Schl	214		RURAL3	13%	E	50%
17	Garfield	0377	Jordan Elem	87	EL	RURAL3	26%	D	60%
17	Garfield	0378	Garfield County H S	97	HS	RURAL3	14%	E	50%
18	Glacier	0400	Browning Elem	1,520	EL	RURAL3	79%	A	90%
18	Glacier	0401	Browning H S	506	HS	RURAL3	72%	B	80%
18	Glacier	0402	Cut Bank Elem	720	EL	RURAL3	42%	C	70%
18	Glacier	0403	Cut Bank H S	302	HS	RURAL3	22%	D	60%
18	Glacier	0404	East Glacier Park Elem	86	EL	RURAL3	80%	A	90%
19	Golden Valley	0407	Ryegate K-12 Schools	116	K12	RURAL3	38%	C	70%
19	Golden Valley	0411	Lavina K-12 Schools	127	K12	RURAL3	62%	B	80%
20	Granite	0416	Philipsburg K-12 Schools	237	K12	RURAL3	42%	C	70%
20	Granite	0419	Drummond Elem	134	EL	RURAL3	45%	C	70%
20	Granite	0420	Drummond H S	83	HS	RURAL3	17%	E	50%
21	Hill	0425	Box Elder Elem	228	EL	RURAL3	91%	A	90%
21	Hill	0426	Box Elder H S	98	HS	RURAL3	67%	B	80%
21	Hill	0427	Havre Elem	1,327	EL	RURAL3	39%	C	70%
21	Hill	0428	Havre H S	780	HS	RURAL3	15%	E	50%

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Co. Number	County	Legal Entity	LeName	Enroll Eligible	Level	Metrop. Statistical Category	Oct 98 Percent Eligible	F & R Lunch Category	E-Rate Discount Percentage
21	Hill	1207	Rocky Boy Elem	438	EL	RURAL3	91%	A	90%
21	Hill	1208	K-G Elem	87	EL	RURAL3	17%	E	50%
21	Hill	1209	K-G H S	58	HS	RURAL3	7%	E	50%
21	Hill	1217	Gildford Colony Elem	7	EL	RURAL3	100%	A	90%
21	Hill	1220	Blue Sky K-12 Schools	158	K12	RURAL3	15%	E	50%
21	Hill	1229	Rocky Boy H S	104	HS	RURAL3	88%	A	90%
21	Hill	9203	St Jude Thaddeus School	241		RURAL3	14%	E	50%
22	Jefferson	0452	Clancy Elem	341	EL	RURAL3	15%	E	50%
22	Jefferson	0453	Whitehall Elem	405	EL	RURAL3	29%	D	60%
22	Jefferson	0454	Whitehall H S	206	HS	RURAL3	13%	E	50%
22	Jefferson	0456	Boulder Elem	254	EL	RURAL3	45%	C	70%
22	Jefferson	0457	Jefferson H S	332	HS	RURAL3	11%	E	50%
22	Jefferson	0460	Montana City Elem	302	EL	RURAL3	8%	E	50%
23	Judith Basin	0464	Stanford K-12 Schools	156	K12	RURAL3	31%	D	60%
23	Judith Basin	0469	Hobson K-12 Schools	164	K12	RURAL3	29%	D	60%
23	Judith Basin	0471	Raynesford Elem	10	EL	RURAL3	40%	C	70%
23	Judith Basin	0472	Geyser Elem	78	EL	RURAL3	63%	B	80%
23	Judith Basin	0473	Geyser H S	37	HS	RURAL3	32%	D	60%
24	Lake	0474	Arlee Elem	365	EL	RURAL3	59%	B	80%
24	Lake	0475	Arlee H S	99	HS	RURAL3	37%	C	70%
24	Lake	0477	Poison Elem	1,180	EL	RURAL3	48%	C	70%
24	Lake	0478	Poison H S	550	HS	RURAL3	31%	D	60%
24	Lake	0481	St Ignatius K-12 Schools	560	K12	RURAL3	52%	B	80%
24	Lake	1199	Ronan Elem	1,119	EL	RURAL3	62%	B	80%
24	Lake	1200	Ronan H S	443	HS	RURAL3	36%	C	70%
24	Lake	1205	Charlo Elem	226	EL	RURAL3	64%	B	80%
24	Lake	1206	Charlo H S	133	HS	RURAL3	45%	C	70%
24	Lake	9396	Two Eagle River H S	124	HS	URBAN1	97%	A	90%
24	Lake	9646	Glacier View Christian	38		URBAN1	74%	B	80%
24	Lake	9951	Two Eagle School	30	EL	URBAN1	100%	A	90%
25	Lewis & Clark	0487	Helena Elem	5,079	EL	RURAL3	22%	D	60%
25	Lewis & Clark	0488	Helena H S	3,109	HS	RURAL3	9%	E	50%
25	Lewis & Clark	0489	Kessler Elem	212	EL	RURAL3	25%	D	60%
25	Lewis & Clark	0492	East Helena Elem	1,050	EL	RURAL3	44%	C	70%
25	Lewis & Clark	0495	Wolf Creek Elem	16	EL	RURAL3	69%	B	80%
25	Lewis & Clark	0502	Augusta Elem	73	EL	RURAL3	52%	B	80%

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Go Number	County	Legal Entity	LeName	Enroll Eligible	Level	Metrop. Statistical Category	Ort 98 Person Eligible	F & R Lunsd Category	Le Rate Discount Percentage
25	Lewis & Clark	0503	Augusta H S	57	HS	RURAL3	18%	E	50%
25	Lewis & Clark	1221	Lincoln K-12 Schools	278	K12	RURAL3	54%	B	80%
26	Liberty	0508	J-I K-12 Schools	105	K12	RURAL3	21%	D	60%
26	Liberty	0510	Chester Elem	154	EL	RURAL3	16%	E	50%
26	Liberty	0511	Chester H S	113	HS	RURAL3	12%	E	50%
27	Lincoln	0519	Troy Elem	369	EL	RURAL3	54%	B	80%
27	Lincoln	0520	Troy H S	216	HS	RURAL3	29%	D	60%
27	Lincoln	0522	Libby K-12 Schools	1,803	K12	RURAL3	41%	C	70%
27	Lincoln	0527	Eureka Elem	515	EL	RURAL3	44%	C	70%
27	Lincoln	0528	Lincoln County H S	341	HS	RURAL3	31%	D	60%
27	Lincoln	0529	Fortine Elem	89	EL	RURAL3	47%	C	70%
27	Lincoln	0534	Trego Elem	69	EL	RURAL3	65%	B	80%
28	Madison	0536	Alder Elem	27	EL	RURAL3	26%	D	60%
28	Madison	0537	Sheridan Elem	184	EL	RURAL3	28%	D	60%
28	Madison	0538	Sheridan H S	112	HS	RURAL3	18%	E	50%
28	Madison	0540	Twin Bridges K-12 Schools	267	K12	RURAL3	27%	D	60%
28	Madison	0543	Harrison K-12 Schools	135	K12	RURAL3	33%	D	60%
28	Madison	0546	Ennis K-12 Schools	376	K12	RURAL3	19%	E	50%
29	McCone	0547	Circle Elem	189	EL	RURAL3	21%	D	60%
29	McCone	0548	Circle H S	98	HS	RURAL3	18%	E	50%
30	Meagher	0569	White Sulphur Spgs Elem	173	EL	RURAL3	52%	B	80%
30	Meagher	0570	White Sulphur Spgs H S	97	HS	RURAL3	29%	D	60%
31	Mineral	0577	Alberton K-12 Schools	189	K12	RURAL3	44%	C	70%
31	Mineral	0579	Superior K-12 Schools	396	K12	RURAL3	42%	C	70%
31	Mineral	0582	St Regis K-12 Schools	190	K12	RURAL3	53%	B	80%
32	Missoula	0583	Missoula Elem	5,338	EL	RURAL3	36%	C	70%
32	Missoula	0584	Missoula H S	3,946	HS	RURAL3	17%	E	50%
32	Missoula	0586	Hellgate Elem	1,187	EL	RURAL3	34%	D	60%
32	Missoula	0588	Lolo Elem	606	EL	RURAL3	37%	C	70%
32	Missoula	0589	Potomac Elem	103	EL	RURAL3	30%	D	60%
32	Missoula	0590	Bonner Elem	354	EL	RURAL3	37%	C	70%
32	Missoula	0592	DeSmet Elem	143	EL	RURAL3	58%	B	80%
32	Missoula	0593	Target Range Elem	429	EL	RURAL3	20%	D	60%
32	Missoula	0595	Clinton Elem	227	EL	RURAL3	57%	B	80%
32	Missoula	0596	Swan Valley Elem	71	EL	RURAL3	15%	E	50%
32	Missoula	0597	Seeley Lake Elem	246	EL	RURAL3	37%	C	70%

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32	Missoula	0599	Frenchtown K-12 Schools	1,094	K12	RURAL3	27%	D	60%
32	Missoula	9021	Loyola-Sacred Heart H S	212	HS	RURAL3	3%	E	50%
32	Missoula	9445	St Josephs School	201		URBAN1	15%	E	50%
33	Musselshell	0605	Roundup Elem	427	EL	RURAL3	50%	B	80%
33	Musselshell	0606	Roundup H S	248	HS	RURAL3	21%	D	60%
33	Musselshell	0607	Melstone Elem	59	EL	RURAL3	51%	B	80%
33	Musselshell	0608	Melstone H S	50	HS	RURAL3	30%	D	60%
34	Park	0612	Livingston Elem	990	EL	RURAL3	47%	C	70%
34	Park	0613	Park H S	575	HS	RURAL3	21%	D	60%
34	Park	0614	Gardiner Elem	167	EL	RURAL3	28%	D	60%
34	Park	1191	Gardiner H S	97	HS	RURAL3	6%	E	50%
34	Park	1215	Arrowhead Elem	117	EL	RURAL3	21%	D	60%
34	Park	1227	Shields Valley Elem	193	EL	RURAL3	21%	D	60%
34	Park	1228	Shields Valley H S	102	HS	RURAL3	45%	C	70%
34	Park	9214	St Mary's School	113		RURAL3	14%	E	50%
35	Petroleum	0642	Winnett K-12 Schools	98	K12	RURAL3	51%	B	80%
36	Phillips	0647	Dodson Elem	70	EL	RURAL3	83%	A	90%
36	Phillips	0648	Dodson H S	38	HS	RURAL3	63%	B	80%
36	Phillips	0657	Saco H S	44	HS	RURAL3	41%	C	70%
36	Phillips	0658	Malta Elem	429	EL	RURAL3	45%	C	70%
36	Phillips	0659	Malta HS	246	HS	RURAL3	22%	D	60%
36	Phillips	0663	Whitewater K-12 Schools	97	K12	RURAL3	52%	B	80%
36	Phillips	1203	Saco Elem	72	EL	RURAL3	43%	C	70%
37	Pondera	0670	Heart Butte Elem	197	EL	RURAL3	94%	A	90%
37	Pondera	0671	Dupuyer Elem	13	EL	RURAL3	69%	B	80%
37	Pondera	0674	Conrad Elem	477	EL	RURAL3	36%	C	70%
37	Pondera	0675	Conrad H S	279	HS	RURAL3	16%	E	50%
37	Pondera	0679	Valier Elem	169	EL	RURAL3	24%	D	60%
37	Pondera	0680	Valier H S	90	HS	RURAL3	23%	D	60%
37	Pondera	0682	Brady K-12 Schools	80	K12	RURAL3	50%	B	80%
37	Pondera	1226	Heart Butte H S	106	HS	RURAL3	87%	A	90%
38	Powder River	0705	Broadus Elem	218	EL	RURAL3	30%	D	60%
38	Powder River	0706	Powder River Co Dist H S	142	HS	RURAL3	14%	E	50%
39	Powell	0712	Deer Lodge Elem	536	EL	RURAL3	34%	D	60%
39	Powell	0713	Powell County H S	350	HS	RURAL3	8%	E	50%
39	Powell	0719	Elliston Elem	31	EL	RURAL3	71%	B	80%

Office of Public Instruction
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Co Number	County	Legal Entity	LeName	Enroll Eligible	Level	Metrop Statistical Category	Oct 98 Percent Eligible	F & R Lunch Category	F-Rate Discount Percentage
40	Prairie	0726	Terry K-12 Schools	221	K12	RURAL3	29%	D	60%
41	Ravalli	0731	Corvallis K-12 Schools	1,285	K12	RURAL3	32%	D	60%
41	Ravalli	0732	Stevensville Elem	695	EL	RURAL3	36%	C	70%
41	Ravalli	0733	Stevensville H S	487	HS	RURAL3	20%	D	60%
41	Ravalli	0735	Hamilton K-12 Schools	1,472	K12	RURAL3	36%	C	70%
41	Ravalli	0738	Victor K-12 Schools	364	K12	RURAL3	32%	D	60%
41	Ravalli	0740	Darby K-12 Schools	609	K12	RURAL3	37%	C	70%
41	Ravalli	0741	Lone Rock Elem	158	EL	RURAL3	38%	C	70%
41	Ravalli	0743	Florence-Carlton K-12 Schls	958	K12	RURAL3	19%	E	50%
41	Ravalli	9853	Hamilton Christian Acad	74		URBAN1	46%	C	70%
42	Richland	0745	Sidney Elem	988	EL	RURAL3	28%	D	60%
42	Richland	0746	Sidney H S	496	HS	RURAL3	10%	E	50%
42	Richland	0747	Savage Elem	98	EL	RURAL3	29%	D	60%
42	Richland	0748	Savage H S	65	HS	RURAL3	29%	D	60%
42	Richland	0750	Fairview Elem	156	EL	RURAL3	49%	C	70%
42	Richland	0751	Fairview H S	120	HS	RURAL3	23%	D	60%
42	Richland	0754	Rau Elem	62	EL	RURAL3	35%	C	70%
42	Richland	0768	Lambert Elem	80	EL	RURAL3	46%	C	70%
42	Richland	0769	Lambert H S	42	HS	RURAL3	29%	D	60%
43	Roosevelt	0774	Frontier Elem	149	EL	RURAL3	44%	C	70%
43	Roosevelt	0775	Poplar Elem	702	EL	RURAL3	78%	A	90%
43	Roosevelt	0776	Poplar H S	209	HS	RURAL3	67%	B	80%
43	Roosevelt	0777	Culbertson Elem	173	EL	RURAL3	38%	C	70%
43	Roosevelt	0778	Culbertson H S	101	HS	RURAL3	22%	D	60%
43	Roosevelt	0780	Wolf Point Elem	743	EL	RURAL3	75%	A	90%
43	Roosevelt	0781	Wolf Point H S	305	HS	RURAL3	35%	C	70%
43	Roosevelt	0782	Brockton Elem	156	EL	RURAL3	92%	A	90%
43	Roosevelt	0783	Brockton H S	48	HS	RURAL3	88%	A	90%
43	Roosevelt	0785	Bainville K-12 Schools	106	K12	RURAL3	17%	E	50%
43	Roosevelt	0786	Froid Elem	74	EL	RURAL3	36%	C	70%
43	Roosevelt	0787	Froid H S	29	HS	RURAL3	38%	C	70%
44	Rosebud	0790	Forsyth Elem	363	EL	RURAL3	26%	D	60%
44	Rosebud	0791	Forsyth H S	174	HS	RURAL3	13%	E	50%
44	Rosebud	0792	Lame Deer Elem	373	EL	RURAL3	95%	A	90%
44	Rosebud	0794	Rosebud Elem	62	EL	RURAL3	66%	B	80%
44	Rosebud	0795	Rosebud H S	39	HS	RURAL3	67%	B	80%

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Go Number	County	Legal Entity	LeName	Enroll Eligible	Level	Metrop Statistical Category	1998 Percent Eligible	F & R Lunch Category	Rate Discount Percentage
44	Rosebud	0796	Colstrip Elem	690	EL	RURAL3	39%	C	70%
44	Rosebud	0797	Colstrip H S	328	HS	RURAL3	22%	D	60%
44	Rosebud	0800	Ashland Elem	112	EL	RURAL3	56%	B	80%
44	Rosebud	1230	Lame Deer H S	134	HS	RURAL3	85%	A	90%
44	Rosebud	9221	St Labre Indian School	260	EL	RURAL3	80%	A	90%
44	Rosebud	9222	St Labre Indian H S	138	HS	RURAL3	59%	B	80%
45	Sanders	0802	Plains Elem	302	EL	RURAL3	55%	B	80%
45	Sanders	0803	Plains H S	196	HS	RURAL3	40%	C	70%
45	Sanders	0804	Thompson Falls Elem	420	EL	RURAL3	56%	B	80%
45	Sanders	0805	Thompson Falls H S	231	HS	RURAL3	30%	D	60%
45	Sanders	0807	Trout Creek Elem	98	EL	RURAL3	74%	B	80%
45	Sanders	0808	Paradise Elem	66	EL	RURAL3	86%	A	90%
45	Sanders	0809	Dixon Elem	70	EL	RURAL3	94%	A	90%
45	Sanders	0811	Noxon Elem	163	EL	RURAL3	50%	B	80%
45	Sanders	0812	Noxon H S	117	HS	RURAL3	37%	C	70%
45	Sanders	0813	Camas Prairie Elem	11	EL	RURAL3	91%	A	90%
45	Sanders	0814	Hot Springs Elem	148	EL	RURAL3	61%	B	80%
45	Sanders	0815	Hot Springs H S	65	HS	RURAL3	42%	C	70%
46	Sheridan	0818	Westby Elem	42	EL	RURAL3	17%	E	50%
46	Sheridan	0819	Westby H S	33	HS	RURAL3	18%	E	50%
46	Sheridan	0821	Medicine Lake Elem	68	EL	RURAL3	43%	C	70%
46	Sheridan	0822	Medicine Lake H S	82	HS	RURAL3	12%	E	50%
46	Sheridan	0828	Plentywood K-12 Schools	471	K12	RURAL3	30%	D	60%
46	Sheridan	0831	Outlook K-12 Schools	46	K12	RURAL3	63%	B	80%
47	Silver Bow	0840	Butte Elem	3,546	EL	RURAL3	35%	C	70%
47	Silver Bow	0842	Ramsay Elem	157	EL	RURAL3	37%	C	70%
47	Silver Bow	1212	Butte H S	1,686	HS	RURAL3	9%	E	50%
47	Silver Bow	9131	Butte Central High	173	HS	RURAL3	8%	E	50%
47	Silver Bow	9228	Central Junior High	111	EL	RURAL3	5%	E	50%
47	Silver Bow	9863	Central Elem School	224	EL	URBAN1	14%	E	50%
48	Stillwater	0846	Park City Elem	175	EL	RURAL3	26%	D	60%
48	Stillwater	0847	Park City H S	116	HS	RURAL3	16%	E	50%
48	Stillwater	0848	Columbus Elem	399	EL	RURAL3	12%	E	50%
48	Stillwater	0849	Columbus H S	196	HS	RURAL3	4%	E	50%
48	Stillwater	0850	Reedpoint Elem	54	EL	RURAL3	48%	C	70%
48	Stillwater	0851	Reedpoint H S	41	HS	RURAL3	54%	B	80%

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Co. Number	County	Legal Entity	LeName	Enroll. Eligible	Level	Metrop. Statistical Category	92-93 Percent. Eligible	F & R Lunch Category	L-Rate Discount Percentage
48	Stillwater	0853	Fishtail Elem	11	EL	RURAL3	0%	F	25%
48	Stillwater	0858	Rapelje Elem	49	EL	RURAL3	51%	B	80%
48	Stillwater	0859	Rapelje H S	38	HS	RURAL3	45%	C	70%
48	Stillwater	0861	Absarokee Elem	226	EL	RURAL3	11%	E	50%
48	Stillwater	0862	Absarokee H S	138	HS	RURAL3	4%	E	50%
49	Sweet Grass	0865	Big Timber Elem	301	EL	RURAL3	36%	C	70%
49	Sweet Grass	0872	Greycliff Elem	26	EL	RURAL3	77%	A	90%
49	Sweet Grass	0882	Sweet Grass County H S	187	HS	RURAL3	26%	D	60%
50	Teton	0883	Choteau Elem	287	EL	RURAL3	42%	C	70%
50	Teton	0884	Choteau H S	172	HS	RURAL3	27%	D	60%
50	Teton	0890	Fairfield Elem	193	EL	RURAL3	27%	D	60%
50	Teton	0891	Fairfield H S	162	HS	RURAL3	23%	D	60%
50	Teton	0893	Dutton K-12 Schools	160	K12	RURAL3	24%	D	60%
50	Teton	0894	Power Elem	105	EL	RURAL3	30%	D	60%
50	Teton	0895	Power H S	67	HS	RURAL3	19%	E	50%
50	Teton	0896	Golden Ridge Elem	41	EL	RURAL3	22%	D	60%
50	Teton	0900	Greenfield Elem	63	EL	RURAL3	43%	C	70%
51	Toole	0903	Sunburst K-12 Schools	275	K12	RURAL3	37%	C	70%
51	Toole	0910	Shelby Elem	416	EL	RURAL3	35%	C	70%
51	Toole	0911	Shelby H S	246	HS	RURAL3	17%	E	50%
52	Treasure	0923	Hysham K-12 Schools	183	K12	RURAL3	36%	C	70%
53	Valley	0926	Glasgow K-12 Schools	872	K12	RURAL3	25%	D	60%
53	Valley	0927	Frazer Elem	106	EL	RURAL3	90%	A	90%
53	Valley	0928	Frazer H S	41	HS	RURAL3	100%	A	90%
53	Valley	0932	Hinsdale Elem	75	EL	RURAL3	44%	C	70%
53	Valley	0933	Hinsdale H S	43	HS	RURAL3	30%	D	60%
53	Valley	0935	Opheim K-12 Schools	94	K12	RURAL3	14%	E	50%
53	Valley	0937	Nashua K-12 Schools	165	K12	RURAL3	33%	D	60%
53	Valley	0941	Lustre Elem	36	EL	RURAL3	28%	D	60%
53	Valley	9016	Lustre Christian High	34	HS	RURAL3	24%	D	60%
54	Wheatland	0945	Harlowton Elem	166	EL	RURAL3	57%	B	80%
54	Wheatland	0946	Harlowton H S	91	HS	RURAL3	29%	D	60%
54	Wheatland	0948	Judith Gap Elem	65	EL	RURAL3	57%	B	80%
54	Wheatland	0949	Judith Gap H S	32	HS	RURAL3	34%	D	60%
55	Wibaux	0964	Wibaux K-12 Schools	207	K12	RURAL3	50%	B	80%
56	Yellowstone	0965	Billings Elem	9,703	EL	URBAN1	35%	C	70%

Office of Public Instruction
January 23, 1999

Co Number	County	Legal Entity	LeName	Enroll Eligible	Level	Metrop Statistical Category	Oct 98 Percent Eligible	F & R Lunch Category	F Rate Discount Percentage
56	Yellowstone	0966	Billings H S	5,386	HS	URBAN1	14%	E	50%
56	Yellowstone	0967	Lockwood Elem	1,251	EL	UFRNG2	45%	C	70%
56	Yellowstone	0968	Blue Creek Elem	158	EL	RURAL3	17%	E	50%
56	Yellowstone	0969	Canyon Creek Elem	222	EL	RURAL3	30%	D	60%
56	Yellowstone	0970	Laurel Elem	1,118	EL	UFRNG2	36%	C	70%
56	Yellowstone	0972	Elder Grove Elem	257	EL	UFRNG2	22%	D	60%
56	Yellowstone	0975	Custer K-12 Schools	88	K12	RURAL3	33%	D	60%
56	Yellowstone	0976	Morin Elem	22	EL	RURAL3	0%	F	25%
56	Yellowstone	0978	Broadview Elem	115	EL	RURAL3	27%	D	60%
56	Yellowstone	0979	Broadview H S	53	HS	RURAL3	25%	D	60%
56	Yellowstone	0981	Elysian Elem	125	EL	UFRNG2	52%	B	80%
56	Yellowstone	0983	Huntley Project K-12 Schools	691	K12	UFRNG2	31%	D	60%
56	Yellowstone	0985	Shepherd Elem	558	EL	UFRNG2	33%	D	60%
56	Yellowstone	0986	Shepherd H S	295	HS	UFRNG2	16%	E	50%
56	Yellowstone	0987	Pioneer Elem	50	EL	RURAL3	0%	F	25%
56	Yellowstone	0989	Independent Elem	199	EL	UFRNG2	9%	E	50%
56	Yellowstone	1196	Yellowstone Academy Elem	57	EL	UFRNG2	100%	A	90%
56	Yellowstone	9050	Blgs Central Catholic H S	365	HS	RURAL3	18%	E	50%
56	Yellowstone	9243	St Francis Primary	646	EL	RURAL3	19%	E	50%
56	Yellowstone	9245	Trinity Lutheran School	177		RURAL3	15%	E	50%

RURAL3 - serves a central city of an MSA - Metropolitan Statistical Area
UFRNG2-fringe of MSA but not primarily central city
URBAN1 - serves a central city of an MSA - Metropolitan Statistical Area

House Business and Labor Committee
Representative Bruce Simon, Chairman
Montana State Capitol
Helena, Montana

EXHIBIT 6
DATE 3/10/99
SB 229

Re: SB 229 by Senator Fred Thomas

March 10, 1999

Montana School Bus Contractors Association is very much in favor of Senate Bill 229. In fact we were requesting a similar bill, but after reading SB 229 we asked to be included as a supporter of SB 229 and dropped our request.

The prevailing wage bill HB 407 extending coverage to school construction services in the last legislative session has caused undue hardships on school districts and the contracts they have in place with service providers. For example, a bus route contract could run from one to five years. The problems of adjusting these contracts has been very costly and confusing to the schools and the contractors. No matter where the cost fell the local taxpayer is the loser.

Senator Thomas's SB 229 in a very fair and simple way takes care of defining the differences in construction contracts and service contracts.

The School Bus Contractors Association and urge your committee to give SB 229 a do pass vote. Thank you for your time and consideration to this problem.



Don Waldron
Lobbyist

EXHIBIT 7
DATE 3/10/99
SB 229

FAX NO: 406-443-5297

TO: Don Waldron

FROM: Hinthier Transportation, Inc.

RE: Senate Bill #229

We are in favor of this bill.

Should this bill not pass, it would make it almost impossible for all small school districts to have contracts for school buses let along other needs, such as janitors, cooks, etc.

We greatly appreciate the efforts that you are making for all small contractors in this state.

EXHIBIT 8
DATE 3/10/99
SB 229

To: Representative Bruce Simon, Chairman
House Business and Labor

From: Don Waldron, Executive Director
Montana Rural Education Association

Date: March 10, 1999

Reference: SB-229 by Senator Fred Thomas

The Montana Rural Education Association is supportive of SB-229 that revises the prevailing wage laws in Montana to exclude public schools from the law for contracted services. These contracted services were never including under the application of the prevailing wage law until two years ago. Since that time a number of our rural areas have been shocked to learn that they can not continue their contracts if they are included with non school service private businesses.

School systems are not required to follow these prevailing law wages and are now being forced to look at taking the busses and food services functions back under the schools operation. This would mean that the private contractors would have to give up their operations. We want to keep the private contractor in these service contracts so we can spend our time on other educational issues.

MREA urges this committee to give full consideration to SB-229 and then send the bill on to the house with a DO-PASS.

Thank you.

OPINIONS OF THE ATTORNEY GENERAL

REVISED CODES OF MONTANA, 1947 - Section 41-701;
UNITED STATES CODE - 40 U.S.C. §§ 276a to 276a-7; 41
U.S.C. §§ 351 to 358.

HELD: The term "public works contracts" in section
18-2-403(2), MCA (1987), includes all con-
tracts subject to the requirements of section
18-2-403(1), MCA (1987).

1 February 1988

Mary M. Hartman, Commissioner
Department of Labor and Industry
P.O. Box 1728
Helena MT 59624

Dear Commissioner Hartman:

You have requested my opinion concerning the following
question:

Do the standard prevailing wage rate
provisions in sections 18-2-401 to 432, MCA
(1987), apply to public contracts which
provide for the rendering of nonconstruction-
related services?

Based on a review of the legislative history associated
with Montana's prevailing wage statute, I conclude that
its provisions continue to apply, as they have since
1973, to service contracts entered into by the state,
counties, municipalities or school districts.

Sections 18-2-401 to 432, MCA (1987), are commonly
referred to as Montana's "Little Davis-Bacon Act."
Thompkins v. Fuller, 40 St. Rptr. 1192, 1195, 667 P.2d
944, 948 (1983). Enacted in 1931 shortly after passage
of the Davis-Bacon Act, 40 U.S.C. §§ 276a to 276a-7, it
initially required "all contracts hereafter let for
state, county, municipal and school construction, repair
and maintenance work under any of the laws of this
State" to include an employment preference provision for
bona fide Montana residents and a provision mandating
the contractor to "pay the standard prevailing rate
wages in effect as paid in the county seat of the county
in which the work is being performed[.]" 1931 Mont.
Laws, ch. 102, § 1. The statute has been extensively
modified since 1931, and several of the amendments are
presently relevant.

VOLUME NO. 42

OPINION NO. 60

CONTRACTS - What constitute "public works contracts"
subject to standard prevailing wage requirements;
LABOR AND INDUSTRY, DEPARTMENT OF - What constitute
"public works contracts" subject to standard prevailing
wage requirements;
LABOR RELATIONS - What constitute "public works
contracts" subject to standard prevailing wage
requirements;
PREVAILING WAGE - What constitute "public works
contracts" subject to;
CODE OF FEDERAL REGULATIONS - 29 C.F.R. §§ 5.2(i) to (k)
(1987);
MONTANA CODE ANNOTATED (1987) - Sections 18-1-102,
18-2-401 to 18-2-432, 18-2-403, 18-2-431;
MONTANA CODE ANNOTATED (1985) - Section 18-2-403;
MONTANA CODE ANNOTATED (1981) - Sections 18-2-403,
18-2-422;
MONTANA CODE ANNOTATED (1978) - Sections 18-2-401,
18-2-403 to 18-2-405;
MONTANA LAWS OF 1987 - Chapter 561;
MONTANA LAWS OF 1981 - Chapter 139;
MONTANA LAWS OF 1973 - Chapter 375;
MONTANA LAWS OF 1931 - Chapter 102;

EX-101
DATE 3/10/99
9329
9

In 1973 the word "services" was added to the first sentence of section 41-701, R.C.M. 1947. 1973 Mont. Laws, ch. 375. As amended, the statute's employment preference and standard prevailing wage requirements were thus extended to all contracts "let for state, county, municipal, school, heavy highway or municipal construction, services, repair and maintenance work[.]" The effect of the amendment was to broaden the statute's scope beyond contracts dealing only with construction-related matters and to encompass contracts concerned with the provision of "services." See Feb. 7, 1973, Minutes of House Labor and Employment Relations Committee (statement of R. L. Ramey). This extension of minimum wage standards to service contracts paralleled the passage of the Federal Service Contract Act, 41 U.S.C. §§ 351-58, in 1967. See generally American Federation of Labor v. Donovan, 757 F.2d 330, 333 (D.C. Cir. 1985) ("The Service Contract Act ... provided the third leg in Congress' support of labor standards in federal contracting. Workers on federal or federally funded construction contracts were already protected under the Davis-Bacon Act ... which was enacted in 1931, while those performing work under federal supply contracts were protected under the Walsh-Healey Public Contract Act ... passed by Congress in 1936"). When the Commissioner of Labor and Industry was given general rulemaking authority under the Montana statute in 1985 (§ 18-2-431, MCA (1987)), he was accordingly directed to consider Federal Service Contract Act rates in determining standard prevailing wage levels. House Bill 387 (49th Reg. Sess.) (statement of intent), reprinted in 2 MCA Annot., § 18-2-431 (1986).

As a result of the 1978 recodification, the lengthy section 41-701, R.C.M. 1947, was divided and placed into sections 18-2-401(1), 18-2-401(3), 18-2-403, 18-2-404(1), and 18-2-405, MCA (1978). Section 18-2-403(1), MCA (1978), contained the first sentence of section 41-701, R.C.M. 1947, and read:

In all contracts hereafter let for state, county, municipal, school, or heavy highway construction, services, repair, and maintenance work under any of the laws of this state there shall be inserted in each of said contracts a provision by which the contractor must give preference to the employment of bona fide Montana residents in the performance of said work and must further pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions

in effect and applicable to the county or locality in which the work is being performed.

The statute was amended in 1981 to add, most significantly, a new subsection to section 18-2-403, MCA (1978), and a new section, § 18-2-422, MCA (1981). 1981 Mont. Laws, ch. 139, §§ 2, 4. Section 18-2-422, MCA (1981), stated that "[a]ll bid specifications and contracts for public works projects must contain a provision stating for each job classification the prevailing wage rate, including fringe benefits, that the contractors and subcontractors must pay during construction of the project[.]" while the new subsection to section 18-3-403, MCA (1978), provided that "[f]ailure to include the provisions required by 18-2-422 in a public works contract relieves the contractor from his obligation to pay the standard prevailing wage rate and places such obligation on the public contracting agency" (§ 18-2-403(3), MCA (1981)). The 1981 amendments also modified section 18-2-403(1), MCA (1978), to require that the bid specifications for all contracts subject to such provision include a provision setting out the employment preference and standard prevailing wage rate requirements. 1981 Mont. Laws, ch. 139, § 2. The terms "public works contract" and "public works projects" used, respectively, in sections 18-2-403(3) and 18-2-422, MCA (1981), were not defined, and there is no indication from the minutes of pertinent legislative hearings as to the scope those terms were intended to have. See Jan. 8 and 13, and Feb. 3, 1981, House Labor and Industry Committee Minutes; Mar. 5 and 7, 1981, Senate Labor and Employment Relations Committee Minutes. The changes effected in 1981 were instead discussed in broad terms and were designed generally to strengthen the statute's enforceability. No intent to modify its substantive reach appears either in the changes themselves or the associated legislative history.

During the 1987 legislative session, finally, substantial changes were enacted in the geographical areas used for determining applicable standard prevailing wage rates for all public contracts except heavy highway construction contracts now subject to uniform, statewide prevailing wage rates. 1987 Mont. Laws, ch. 561, §§ 1-4. Pursuant to these amendments, the employment preference and standard prevailing wage rate requirements in section 18-2-403(1), MCA (1985), were separated into distinct subsections which read:

(1) In any contract let for state, county, municipal, school, or heavy highway construction, services, repair, or maintenance

work under any law of this state, there shall be inserted in the bid specification and the contract a provision requiring the contractor to give preference to the employment of bona fide Montana residents in the performance of the work.

(2) All public works contracts under subsection (1), except those for heavy highway construction, must contain a provision requiring the contractor to pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions, in effect and applicable to the district in which the work is being performed.

§ 18-2-403(1), (2), MCA (1987). No reported discussion of the term "public works contracts" used in section 18-2-403(2), MCA (1987), appears in pertinent committee minutes. See Feb. 18, 1987, House Business and Labor Committee Minutes; Mar. 24 and 26, 1987, Senate Labor and Employment Relations Committee Minutes. Except for the exclusion of all public contracts of \$25,000 or less from coverage under the statute (1987 Mont. Laws, ch. 561, § 2), there was no expressed intent to modify the substantive scope of the statute.

As stated above, no question exists that public contracts for services unrelated to construction matters were subject to the employment preference and standard prevailing wage rate conditions prior to the 1987 amendments. The issue becomes, therefore, whether those amendments were intended to limit application of the prevailing wage requirement to a class of public contracts smaller than that subject to the employment preference requirement in section 18-2-403(1), MCA (1987). Resolution of this issue is in large measure controlled by well-settled canons of statutory interpretation.

The goal of all statutory construction is to ascertain and implement legislative intent. E.g., Burritt v. City of Butte, 161 Mont. 530, 534, 508 P.2d 563, 565 (1973); State ex rel. School District No. 8 v. Lensman, 108 Mont. 118, 128, 88 P.2d 63, 67 (1939). Search for that intent begins with the language of the statute itself and, if such language is unambiguous, ends there. Lewis & Clark County v. State, 43 St. Rptr. 2150, 2153, 728 P.2d 1348, 1350 (1986); W.D. Construction, Inc. v. Board of County Commissioners, 42 St. Rptr. 1638, 1641, 707 P.2d 1111, 1113 (1985). However, when ambiguity does exist, legislative intent can be inferred from both

internal and external sources--i.e., from a careful reading of all provisions in the statute and from, most typically, extant legislative history. See, e.g., Lewis & Clark County v. State, supra ("[i]f intent cannot be determined from the context of the statute, we examine the legislative history"); McClanathan v. Smith, 186 Mont. 56, 61, 606 P.2d 507, 510 (1980) ("[w]here there is doubt about the meaning of a phrase in a statute, the statute is to be construed in its entirety and the phrase must be given a reasonable construction which will enable it to be harmonized with the entire statute"); Hostetter v. Island Development Corporation, 172 Mont. 167, 171, 561 P.2d 1323, 1326 (1977) ("[t]his is one section of the [act] and it is the duty of this Court to interpret it in such a manner as to ensure coordination with other sections of the Act, and fulfill legislative intent"); Aleksich v. Industrial Accident Fund, 116 Mont. 127, 137, 151 P.2d 1016, 1020 (1944) ("[t]o ascertain the intention of the legislature the Act must be read as a whole and, where possible, conflicting and ambiguous parts made to harmonize"). My duty, like that of a court, is thus "to give effect to the objects of the statute [and] to construe it so as to promote justice[.]" Mackin v. State, 37 St. Rptr. 1998, 2002, 621 P.2d 477, 481 (1980); accord LaFountaine v. State Farm Mutual Automobile Insurance Company, 42 St. Rptr. 496, 499, 698 P.2d 410, 413 (1985).

Instantly, the term "public works contracts" in section 18-2-403(2), MCA (1987), is not defined and is arguably susceptible to different interpretations. The Montana Supreme Court, for example, has construed the term "public contracts for ... public works of all kinds" in section 18-1-102(1)(a), MCA (1987), as including a contract for janitorial services. State ex rel. Great Falls Mr. Klean v. Montana State Board of Examiners, 153 Mont. 220, 226, 456 P.2d 278, 281 (1969). The Commissioner of Labor and Industry, however, issued a declaratory ruling in 1982 construing the term "public works projects" in section 18-2-422, MCA (1981), to include only construction-related activity and thereby concluded that other public contracts, while subject to the standard prevailing wage rate requirement, need not contain a provision setting forth the prevailing wage rate for each job classification. The ruling relied heavily for its conclusion upon the definitions of the terms "building" or "work," "construction," and "public building" or "public work" appearing in United States Department of Labor regulations implementing, *inter alia*, the Davis-Bacon Act. 29 C.F.R. §§ 5.2(i) to (k) (1987). These definitions limit the scope of such terms to construction-related activity.

Although the issue is not free from doubt, the more reasonable interpretation of the term "public works contracts" in section 18-2-403(2), MCA (1987), is an expansive one consonant with the 1973 amendment to the statute extending both employment preference and standard prevailing wage requirements to contracts for services. An interpretation restricting section 18-2-403(2), MCA (1987), to construction-related contracts would exempt, of course, service contracts from the latter requirement without any apparent legislative intent to undo partially what had been accomplished 16 years earlier. Such a major change in labor standards law seems clearly unintended by the 1987 amendments whose objective, as developed above, was to strengthen the statute's remedial provisions; there was, conversely, no discernible intent to alter its reach except for exclusion of contracts with a value of \$25,000 or less. Whatever the precise reason for use of the term "public works contracts" in subsection 2 of section 18-2-403, MCA (1987), rather than simply the term "contracts," I find the scope of that subsection and the previous subsection to be coterminous with respect to the type of public contracts covered. Cf. Johnson v. Marias River Electric Cooperative, Inc., 41 St. Rptr. 1528, 1532, 687 P.2d 668, 671 (1984) (Legislature did not intend to abrogate sub silentio established right of children to recover damages for the wrongful death of a parent by adoption of the Uniform Probate Code).

Lastly, my interpretation of the term "public works contracts" in section 18-2-403(2), MCA (1987), is not inconsistent with the Commissioner's 1982 declaratory ruling as to section 18-2-422, MCA (1981). The Commissioner realized that section 18-2-403(1), MCA (1981), directed bids for public contracts and the contracts themselves to require payment of standard prevailing wage rates and was thus concerned only with the discrete question of whether section 18-2-422, MCA (1981), mandated such bids and contracts to include not only a statement of that requirement but also the actual wage rate, including fringe benefits, for each employee job classification of the contractor or subcontractor performing work on the "public works project[.]" The central term in his ruling was therefore not "public works contract," as used in section 18-2-403(3), MCA (1981), but rather "public works projects," as used in section 18-2-422, MCA (1981). When read in its entirety, the latter provision is clearly directed to construction-related contracts which, like service contracts, represent a form of a "public works contract." The declaratory ruling should not be viewed as concluding that the term "public works contract" in

section 18-2-403(3), MCA (1981), refers only to construction-related contracts; instead, that provision, now codified as section 18-2-403(5), MCA (1987), applies only to that class of public works contracts subject to the requirements of section 18-2-422, MCA (1987).

THEREFORE, IT IS MY OPINION:

The term "public works contracts" in section 18-2-403(2), MCA (1987), includes all contracts subject to the requirements of section 18-2-403(1), MCA (1987).

Very truly yours,

MIKE GREELY
Attorney General

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL

DATE 3/10/99

NAME	PRESENT	ABSENT	EXCUSED
Chairman Bruce Simon	X		
Rep. Paul Sliter	X		
Rep. Bob Pavlovich	X		
Rep. Joe Barnett	X		
Rep. Rod Bitney	X	X	
Rep. Sylvia Bookout-Reineke	X		
Rep. Roy Brown	X		
Rep. David Ewer	X		
Rep. Billie Krenzler	X		
Rep. Bob Lawson	X		
Rep. Gay Ann Masolo	X		
Rep. Gary Matthews	X		
Rep. Joe McKenney	X		
Rep. Carolyn Squires	X		
Rep. Jay Stovall	X		
Rep. Carley Tuss	X		
Rep. Carol Juneau	X		
Rep. Cliff Trexler	X		

MONTANA HOUSE OF REPRESENTATIVES VISITORS REGISTER

DATE 3-10-99

BILL NO. SB 229

SPONSOR(S) _____

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE
CIRCLE

NAME

ADDRESS

REPRESENTING

☒ POI	Kerth Allen	P.O. Box 131 Helena	TBEW 233
☒ POI	Pat Mischel	47 RD 261 Glenridge, MT	School Dist Bus, Cook, trail.
☒ POI	Phil Campbell	Helena	MEA-MFT
☒ POI	Eugene Fensler	HELENA	MJH & HC
☒ POI	Darrell Holzer	Helena	MT. ST. AFL-CIO
☒ POI	Drew Hunter	Helena	ARP
☒ POI	LANE MELTON	HELENA	MSBA
☒ POI	DON WALDRON	Helena	MRSA MSBCA
☒ POI	Budd Cobb	Helena	myself
☐ POI			
☐ POI			
☐ POI			
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

LEGISLATIVE TAPE LOG

COMMITTEE:

House Ins & Labor
3/10/99

DATE:

MINUTES

Page 1 B
SB 217

CONTENT NOTES

447

Ewer / M. Leary
Senor / Sen Miller

Oppose

Sen. Miller opposes SB 217.
Motion to carry.

46

SB 329

Sen Thomas enters SB
329.

140

Senor Milton - Mt School
Board
opponent Ex 5

290

Sen Beamer - Bq. Sky
Bq. Lines
opponent Ex 6

310

Tom Halderon - Mt. Rural
Co

Ex 7 & 8

370

Rep Ewer. MR 53.

opponent Ex 9

448

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Phil Campbell - MEd - Mt
Fed of Teachers
opponent Ex 9

46

Est. Mitchell - Glendive
School Board.
opponent Ex 4

148

Gene Jenderson - Mt Joint
Camp & View of
opponent

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COMMITTEE:

House Bus & School

DATE:

2/10/99

MINUTES

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SB 329

CONTENT NOTES

302

David Wolper - Aft. cis
opponent.

348

Matthew questions Mitchell
Wolper
Squire Redderson

393

Sen question Halderon

506

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SB 305

Sen Thomas closed SB 329

92

Sen Thomas. SD 31
intro SB 305

115

Mike Pastor. Mt. Contractor
born
opponent

194

Paul Thompson. Ellen
Const. Rife
opponent.

228

Ed Maconik - Maconik Const.
President
opponent

359

David Wolper - Aft. cis
opponent

314

Gene Anderson. Int. Joint
Camp & Away Comm
opponent

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN BRUCE SIMON**, on March 11, 1999 at
8:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Rep. Bruce Simon, Chairman (R)
Rep. Bob Pavlovich, Vice Chairman (D)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. David Ewer (D)
Rep. Carol C. Juneau (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Gay Ann Masolo (R)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)

Members Excused: Rep. Paul Sliter, Vice Chairman (R)

Members Absent: None.

Staff Present: Stephen Maly, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 387, SB 123, SB 125, SB 126,
SB 131, SB 351, SB 439 (2/20/99)

Executive Action: SB 123, SB 125, SB 351, SB
305, SB 229, SB 131

EXECUTIVE ACTION ON SB 305

Motion/Vote: REP. SLITER moved that SB 305 BE CONCURRED IN.
Motion carried 11-7 with Ewer, Juneau, Krenzler, Matthews,
Pavlovich, Squires, and Tuss voting no.
{Tape : 2; Side : B; Approx. Time Counter : 197 - 259}

EXECUTIVE ACTION ON SB 229

Motion/Vote: REP. SLITER moved that SB 229 BE CONCURRED IN.
Motion carried 10-8 with Ewer, Juneau, Krenzler, Matthews,
Pavlovich, Simon, Squires, and Tuss voting no. {Tape : 2; Side :
B; Approx. Time Counter : 259 - 340}

EXECUTIVE ACTION ON SB 217

Motion: REP. SLITER moved that SB 217 BE CONCURRED IN.
{Tape : 2; Side : B; Approx. Time Counter : 340 - 345}

Motion: REP. TUSS moved that SB 217 BE AMENDED.
Rep. Tuss withdrew amendments.
{Tape : 2; Side : B; Approx. Time Counter : 345 - 400}

Motion/Vote: REP. SLITER moved that SB 217 BE CONCURRED IN.
Motion failed 9-9 with Bookout-Reinicke, Ewer, Juneau, Krenzler,
Matthews, Pavlovich, Squires, Trexler, and Tuss voting no.
{Tape : 2; Side : B; Approx. Time Counter : 400 - 500}
{Tape : 3; Side : A; Approx. Time Counter : 0 - 82}

EXECUTIVE ACTION ON SB 319

Motion: REP. EWER moved that SB 319 BE CONCURRED IN.
{Tape : 3; Side : A; Approx. Time Counter : 82 - 90}

Motion/Vote: REP. BOOKOUT-REINICKE moved that SB 319 BE AMENDED.
Motion carried unanimously.
{Tape : 3; Side : A; Approx. Time Counter : 90 - 103}

Motion/Vote: REP. BOOKOUT-REINICKE moved that SB 319 BE
CONCURRED IN AS AMENDED. Motion failed 9-9 with Barnett, Bitney,
Bookout-Reinicke, Brown, Masolo, McKenney, Simon, Sliter, and
Stovall voting aye.
{Tape : 3; Side : A; Approx. Time Counter : 103 - 178}



HOUSE STANDING COMMITTEE REPORT

March 11, 1999

Page 1 of 1

Mr. Speaker:

We, your committee on **Business and Labor** report that **Senate Bill 229** (third reading copy -- blue) be concurred in.

Signed: _____

Bruce Simon
Representative Bruce Simon, Chair

Rep
To be carried by Senator Paul Sliter

- END -

Committee Vote:
Yes 10, No 8.

551311SC.ham

3/11 1:15 pm
wme

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL

DATE 3/11/99

NAME	PRESENT	ABSENT	EXCUSED
Chairman Bruce Simon	X		
Rep. Paul Sliter			X
Rep. Bob Pavlovich	X		
Rep. Joe Barnett	X		
Rep. Rod Bitney	X X	X	
Rep. Sylvia Bookout-Reineke	X		
Rep. Roy Brown	X		
Rep. David Ewer	X		
Rep. Billie Krenzler	X		
Rep. Bob Lawson	X		
Rep. Gay Ann Masolo	X		
Rep. Gary Matthews	X		
Rep. Joe McKenney	X		
Rep. Carolyn Squires	X		
Rep. Jay Stovall	X		
Rep. Carley Tuss	X		
Rep. Carol Juneau	X		
Rep. Cliff Trexler	X		

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE BUSINESS AND LABOR COMMITTEE

DATE 3/11/99 BILL NO. SB229 NUMBER

MOTION: That motion do pass SB229

10-8

NAME	AYE	NO
Rep. Paul Sliter	X	
Rep. Rod Bitney	X	
Rep. Sylvia Bookout-Reinicke	X	
Rep. Roy Brown	X	
Rep. Bob Pavlovich		X
Rep. Joe Barnett	X	
Rep. Cliff Trexler	X	
Rep. Gary Matthews		X
Rep. Carol Juneau		X
Rep. David Ewer		X
Rep. Billie Krenzler		X
Rep. Bob Lawson	X	
Rep. Joe McKenny	X	
Rep. Carolyn Squires		X
Rep. Jay Stovall	X	
Rep. Gay Ann Masolo	X	
Rep. Carly Tuss		X
Rep. Bruce Simon	X	X

LEGISLATIVE TAPE LOG

COMMITTEE:

DATE:

MINUTES

House Gen & Labor
3/11/99

CONTENT NOTES

197 Cap 26
SB 305
11-7
do amend

259 SB 229
do amend
10-8

346 SB 217
do
Cap 39
9-9

SB 305
do amend by State
11-7 roll call

SB 229 do amend by State
10-8

SB 217 do amend by State
Just review amendment
late amendment
Just w/ new amendment

Repeal Income Tax
but in 8-9

82 SB 319
do
Amended

Equal
Backout move SB
319. do not amend

Back out move amendment
Equal move

103

Vote amendments Backout
18-0

Backout move do amend
as proposed
Equal w/ 9-9 tie

tie

INDEX TO BILLS IN COMMITTEE

- Committee: (S) Free Conference -

July 02, 1999

02:28 PM)

SB 184 **SPONSOR:** Grosfield, Lorents **SHORT TITLE:** Generally revise property tax law

REFERRED ON: 04/15/1999

HEARD ON: 04/17/1999

HEARD ON: 04/19/1999

FINAL DISPOSITION 05/10/1999 Chapter Number Assigned

SB 200 **SPONSOR:** Taylor, Mike **SHORT TITLE:** Stimulate economic growth and business retention; revise class 8 property tax

BY REQUEST OF: Joint Select Committee On Jobs And Income

REFERRED ON: 03/27/1999

HEARD ON: 03/29/1999

REFERRED ON: 04/09/1999

HEARD ON: 04/09/1999

FINAL DISPOSITION 04/12/1999 Chapter Number Assigned

SB 217 **SPONSOR:** Miller, Ken **SHORT TITLE:** Allow electrical apprentice to take license exam

REFERRED ON: 04/08/1999

HEARD ON: 04/13/1999

HEARD ON: 04/15/1999

FINAL DISPOSITION 04/22/1999 (S) Died in Process

SB 229	SPONSOR: Thomas, Fred	SHORT TITLE: Exempt certain school districts from nonconstruction services job classification
---------------	------------------------------	--

REFERRED ON: 04/08/1999

HEARD ON: 04/13/1999

FINAL DISPOSITION 04/29/1999 Chapter Number Assigned

SB 260 **SPONSOR:** Glaser, Bill **SHORT TITLE:** Reduce the taxes on light vehicles and fleet vehicles

REFERRED ON: 03/12/1999

HEARD ON: 03/16/1999

FINAL DISPOSITION 03/27/1999 Chapter Number Assigned

SB 274 **SPONSOR:** Wilson, Bill **SHORT TITLE:** Exempt personal property used to build and launch space vehicles

REFERRED ON: 03/06/1999

HEARD ON: 04/09/1999

FINAL DISPOSITION 05/04/1999 Chapter Number Assigned

SB 325 **SPONSOR:** Hertel, John **SHORT TITLE:** Revise school trustee election procedures

REFERRED ON: 03/17/1999

HEARD ON: 03/18/1999

FINAL DISPOSITION 03/24/1999 Chapter Number Assigned

SENATE BILL NO. 229

INTRODUCED BY F. THOMAS, D. TOEWS, T. BECK, A. ELLIS,
D. GRIMES, T. KEATING, B. KEENAN, S. ORR, D. BERRY, K. MESAROS

A BILL FOR AN ACT ENTITLED: "~~AN ACT AMENDING THE PREVAILING WAGE LAWS FOR PUBLIC WORKS CONTRACTS; EXEMPTING CERTAIN SCHOOL DISTRICT CONTRACTS FOR DISTRICTS FROM NONCONSTRUCTION SERVICES FROM JOB CLASSIFICATIONS; CLARIFYING PUBLIC WORKS CONTRACT AND BID SPECIFICATION PROVISIONS TO REQUIRE THAT ALL CONTRACTORS AND SUBCONTRACTORS INVOLVED IN A PROJECT SHALL PAY STANDARD PREVAILING WAGES, INCLUDING FRINGE BENEFITS, FOR ALL JOB CLASSIFICATIONS; ELIMINATING THE CIVIL PENALTY AGAINST PUBLIC AGENCIES THAT FAIL TO INCLUDE REQUIRED PREVAILING WAGE PROVISION IN CONTRACTS; REQUIRING THE COMMISSIONER OF LABOR AND INDUSTRY TO DIVIDE THE STATE INTO 56 PREVAILING WAGE DISTRICTS FOR NONCONSTRUCTION SERVICES TO REFLECT LOCAL ECONOMIES AND FINANCIAL CIRCUMSTANCES; AMENDING SECTIONS SECTION 18-2-401, 18-2-407, 18-2-411, AND 18-2-422, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN A RETROACTIVE APPLICABILITY DATE.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 18-2-401, MCA, is amended to read:

"18-2-401. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) A "bona fide resident of Montana" is a person who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the person's past habitation in this state has been coupled with an intention to make it the person's home. Sojourners or persons who come to Montana solely in pursuance of any contract or agreement to perform labor may not be considered to be bona fide residents of Montana within the meaning and for the purpose of this part.

(2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(3) (a) "Construction services" means work performed by an individual in construction, heavy

1 construction, highway construction, and remodeling work.

2 (b) The term does not include:

3 (i) engineering, superintendence, management, office, or clerical work on a public works contract;
4 or

5 (ii) consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts
6 with professionals licensed under state law.

7 (4) "Department" means the department of labor and industry provided for in 2-15-1701.

8 (5) "District" means a prevailing wage rate district established as provided in 18-2-411.

9 (6) "Heavy and highway construction wage rates" means wage rates, including fringe benefits
10 for health and welfare and pension contributions, that meet the requirements of the Employee Retirement
11 Income Security Act of 1974 and other bona fide programs approved by the United States department
12 of labor and travel allowance that are determined and established statewide for heavy and highway
13 construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails,
14 parking areas, or utility rights-of-way.

15 (7) "Nonconstruction services" means work performed by an individual, not including
16 management, office, or clerical work, for:

17 (a) the maintenance of publicly owned buildings and facilities, including public highways, roads,
18 streets, and alleys;

19 (b) custodial or security services for publicly owned buildings and facilities;

20 (c) grounds maintenance for publicly owned property;

21 (d) the operation of public drinking water supply, waste collection, and waste disposal systems;

22 (e) law enforcement, including janitors and prison guards;

23 (f) fire protection;

24 (g) public or school transportation driving;

25 (h) nursing, nurse's aid services, and medical laboratory technician services;

26 (i) material and mail handling;

27 (j) food service and cooking;

28 (k) motor vehicle and construction equipment repair and servicing; and

29 (l) appliance and office machine repair and servicing.

30 (8) "Public works contract" means a contract for construction services ~~or nonconstruction~~

1 ~~services~~ let by the state, county, municipality, school district, or political subdivision or for
2 nonconstruction services let by the state, county, municipality, or political subdivision other than a school
3 district in which the total cost of the contract is in excess of \$25,000. THE NONCONSTRUCTION SERVICES
4 CLASSIFICATION DOES NOT APPLY TO ANY SCHOOL DISTRICT THAT AT ANY TIME PRIOR TO JANUARY 1, 1999,
5 CONTRACTED WITH A PRIVATE CONTRACTOR FOR THE PROVISION OF NONCONSTRUCTION SERVICES ON BEHALF OF THE
6 DISTRICT.

7 (9) (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

8 (i) the heavy and highway construction wage rates applicable to heavy and highway construction
9 projects; or

10 (ii) those wages, other than heavy and highway construction wages, including fringe benefits for
11 health and welfare and pension contributions, that meet the requirements of the Employee Retirement
12 Security Act of 1974 and other bona fide programs approved by the United States department of labor
13 and travel allowance that are paid in the district by other contractors for work of a similar character
14 performed in that district by each craft, classification, or type of worker needed to complete a contract
15 under this part. In each district, the standard prevailing rate of wages must be computed from a weighted
16 average wage rate based on all of the hours worked on work of a similar character performed in the
17 district unless the survey of employers in the district does not generate sufficient data. If the survey
18 produces insufficient data, the rate may be established by the use of other information or methods that
19 the commissioner determines fairly establish the standard prevailing rate of wages. The commissioner
20 shall establish by rule the method or methods by which the standard prevailing rate of wages is
21 determined. The rules must establish a process for determining if there is insufficient data generated by
22 a survey of employers in the district that requires the use of other methods of determining the standard
23 prevailing rate of wages. The rules must identify the amount of data that constitutes insufficient data and
24 require the commissioner of labor to use other methods of determining the standard prevailing rate of
25 wages when insufficient data exists. The alternative methods of determining the prevailing rate of wages
26 must provide for review and the incorporation of data from work of a similar character that is conducted
27 as near as possible to the original district.

28 (b) When work of a similar character is not being performed in the district, the standard prevailing
29 rate of wages, including fringe benefits for health and welfare and pension contributions, that meets the
30 requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved

1 by the United States department of labor and the rate of travel allowance must be those rates established
2 by collective bargaining agreements in effect in the district for each craft, classification, or type of worker
3 needed to complete the contract.

4 (10) "Work of a similar character" means work on private or commercial projects as well as work
5 on public projects."

6

7 ~~Section 2. Section 18-2-407, MCA, is amended to read:~~

8 ~~"18-2-407. Forfeiture for failure to pay standard prevailing wage. (1) Any contractor,~~
9 ~~subcontractor, or employer who pays workers or employees at less than the standard prevailing wage as~~
10 ~~established under the public works contract shall forfeit to the department a penalty at a rate of up to~~
11 ~~20% of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money~~
12 ~~collected by the department under this section must be deposited in the employment security account,~~
13 ~~as provided in 39-51-409, and must be used for enforcement. A contractor, subcontractor, or employer~~
14 ~~shall also forfeit to the employee the amount of wages owed plus \$25 a day for each day that the~~
15 ~~employee was underpaid.~~

16 ~~(2) Whenever it appears to the contracting agency or to the Montana commissioner of labor and~~
17 ~~industry that there is insufficient money due to the contractor or the employer under the terms of the~~
18 ~~contract to cover penalties, the Montana commissioner of labor and industry may, within 90 days after~~
19 ~~the filing of notice of completion of the project and its acceptance by the contracting agency, maintain~~
20 ~~an action in district court to recover all penalties and forfeitures due. This part does not prevent the~~
21 ~~individual worker who has been underpaid or the commissioner of labor and industry on behalf of all the~~
22 ~~underpaid workers from maintaining an action for recovery of the wages due under the contract as~~
23 ~~provided in Title 39, chapter 3, part 2, except that appeal of the hearing officer's decision is made directly~~
24 ~~to district court rather than to the board of personnel appeals.~~

25 ~~(3) The civil penalties assessed against a contractor, subcontractor, or employer under this~~
26 ~~section may not be transferred to or accrue against the contracting agency."~~

27

28 ~~Section 3. Section 18-2-411, MCA, is amended to read:~~

29 ~~"18-2-411. Creation of prevailing wage rate districts -- construction districts -- nonconstruction~~
30 ~~services districts. (1) Without (a) Except as provided in subsection (2), without taking into consideration~~

1 ~~heavy and highway construction wage rates, the commissioner shall divide the state into at least 10~~
2 ~~prevailing wage rate districts for construction services.~~

3 ~~(b) The commissioner shall divide the state into a minimum of 56 prevailing wage rate districts~~
4 ~~for nonconstruction services or one district for each county. An additional prevailing wage rate district~~
5 ~~must be developed within each county when creation is necessary to adequately reflect local economies~~
6 ~~and financial circumstances.~~

7 ~~(2) In initially determining the districts, the commissioner must shall:~~

8 ~~(a) follow the rulemaking procedures in the Montana Administrative Procedure Act; and~~

9 ~~(b) publish the reasons supporting the creation of each district.~~

10 ~~(3) A district boundary may not be changed except for good cause and in accordance with the~~
11 ~~rulemaking procedures in the Montana Administrative Procedure Act.~~

12 ~~(4) The presence of collective bargaining agreements in a particular area may not be the sole basis~~
13 ~~for the creation of boundaries of a district, nor may the absence of collective bargaining agreements in~~
14 ~~a particular area be the sole basis for changing the boundaries of a district.~~

15 ~~(5) For each prevailing wage rate district established under this section, the commissioner shall~~
16 ~~determine the standard prevailing rate of wages to be paid employees, as provided in 18-2-401 and~~
17 ~~18-2-402."~~

18
19 ~~Section 4. Section 18-2-422, MCA, is amended to read:~~

20 ~~"18-2-422. Bid specification and public works contract to contain standard prevailing wage rate.~~
21 ~~All public works contracts and the bid specifications for those contracts must contain a provision stating~~
22 ~~for each job classification the standard prevailing wage rate, including fringe benefits, that the contractors~~
23 ~~and subcontractors shall pay during construction of the project that all contractors and subcontractors~~
24 ~~involved in a project shall pay the standard prevailing wage, including fringe benefits, for all job~~
25 ~~classifications."~~

26
27 NEW SECTION. Section 2. Effective date -- applicability. [This act] is effective July 1, 1999, ON
28 PASSAGE AND APPROVAL and applies RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, to SCHOOL DISTRICT
29 contracts entered into on or after July 1, 1999.

30 - END -

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

FREE CONFERENCE ON SB 229 AND SB 458

Call to Order: By **SENATOR FRED THOMAS**, on April 13, 1999 at 8:04 A.M., in Room 402 Capitol.

ROLL CALL

Members Present:

Sen. Fred Thomas (SB 229 and SB 458)
Sen. Walter McNutt (SB 229)
Sen. Vicki Cocchiarella (SB 229)
Rep. Daniel Fuchs (SB 229)
Rep. Cliff Trexler (SB 229)
Rep. George Golie (SB 229)
Sen. Ken Mesaros (SB 458)
Sen. Steve Doherty (SB 458)
Rep. William Rehbein (SB 458)
Rep. Jim Shockley (SB 458)
Rep. Gary Beck (SB 458)

Members Excused: None.

Members Absent: None.

Staff Present:

Phoebe Olson Secretary
Eddy McClure, Legislative Services Division (SB 229)
Leanne Kurtz, Legislative Services Division (SB 458)

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Free Conference Committee on SB 229 and SB 458.

SB 229

SENATOR THOMAS, called the meeting to order, and presented a letter to the committee. EXHIBIT(1)

Eddye McClure, explained the amendments. EXHIBIT(2)

Vote: SENATOR MCNUTT made a motion that AMENDMENT SB022905.AEM BE ADOPTED. Motion carried unanimously.

Vote: REPRESENTATIVE FUCHS made a motion that SB 229 DO PASS AS AMENDED. Motion carried unanimously.

{Tape : 1; Side : A; Approx. Time Counter : 807; Comments : stopped the tape till 8:18am.}

SB 458

SENATOR THOMAS, said the amendments were put on the House Floor. He asked Bob Lane from the Department of Fish, Wildlife and Parks to address an amendment.

Bob Lane, MT Fish Wildlife and Parks, explained the Departments concerns. EXHIBIT(3). He also gave options for amendments. EXHIBIT(4).

SENATOR THOMAS, wanted to discuss inserting "knowingly" or "negligently", back into Section 2.

SENATOR MESAROS, said normally "negligently" was standard in the penalty provisions.

Bob Lane, replied that was correct.

REPRESENTATIVE SHOCKLEY, asked someone to show him anywhere in title 45, where it ever says purposefully, knowingly and negligently. He said that was customary in Fish and Game codes but no where else in statute.

Bob Lane, pointed to Section 45-2-103.

Montana *Si*

CONFERENCE COMMITTEE ON SB 229
EXHIBIT NO. 1
DATE 4.13.99



SENATOR FRED THOMAS
SENATE DISTRICT 31

HOME ADDRESS:
3566 HOLLY LANE
STEVENSVILLE, MONTANA 59870
PHONE: (406) 777-5000 (HOME)
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The Big Sky Country
Majority Whip

COMMITTEES:
RULES
BUSINESS & INDUSTRY
LABOR & EMPLOYMENT RELATIONS,
VICE-CHAIR
PUBLIC HEALTH & WELFARE, VICE-CHAIR

TO: Free Conference Committee, Senate Bill 229
FROM: Senator Fred Thomas
DATE: April 12, 1999
RE: Senate Bill 229, House Amendments

Senate Bill 229 was originally introduced to exempt all school districts from the nonconstruction service classifications for prevailing wage contracts. Nonconstruction services include school bus transportation and school food service programs, among other items. The Senate passed Senate Bill 229 on a vote of 32-18 on third reading, and transmitted the bill to the House. Senate Bill 229 was amended on the House floor, and although the amendments narrowed the exemption from the prevailing wage laws to certain school districts, I am willing to accept the substance of those amendments in light of the apparent agreement between those representing management and labor that the House amendments strike a compromise acceptable to both sides.

With the amendments, school districts that have privately contracted out for nonconstruction services will be allowed to continue to do so upon passage of this bill on a permanent basis without being subject to the prevailing wage laws for such services. Specifically, this means that the Hamilton School District and the Libby School District, for example, can reinstate their food service programs without being subject to the prevailing wage laws for their contracted programs. Likewise, school districts like Missoula, Bozeman, Helena, Kalispell, Great Falls, Whitefish, Drummond, Billings and the other 110 or so school districts that privately contract for bus services can continue to do so in the future without being subject to the prevailing wage laws.

These school districts and other similarly situated school districts, by virtue of their prior actions in contracting with the private sector for provision of nonconstruction services, will be allowed to continue to contract for provision of the specific services previously contracted without becoming subject to the prevailing wage. School districts that have never previously privately contracted for nonconstruction services, on the other hand, will be subject to the prevailing wage laws for nonconstruction services if they ever choose to contract with the private sector for such services, and will be aware of that fact in advance of the decision to contract out.

A second amendment added by the House, however, does not make much sense, in that it provides that the bill is retroactive to a date, July 1, 1999, that has not yet occurred. Most of the confusion over the retroactive applicability amendment can be traced to a reference date in the bill of January 1, 1999. There was no intent to make the bill retroactive. The use of the January 1 date was to provide a reference date for determining the conduct of those districts that are permanently exempt from payment of the prevailing wage on specific nonconstruction services *after* the effective date. The amendments in the attached grey bill reference that the bill will become effective immediately upon passage and approval, and will exempt contracts entered into on or after the effective date.

Although the Senate version of SB 229 was a more direct approach, I urge adoption of the attached amendments to (1) ensure that school districts who have previously looked to the private sector for their nonconstruction services can continue to do so without the threat of an unfunded mandate that exists without the bill and (2) to ensure that the version of SB 229 passed by the Legislature meets the needs of both management and labor.

Amendments to Senate Bill No. 229
Reference Copy

For the Senate Free Conference Committee

Prepared by Eddye McClure
April 12, 1999 (3:07PM)

1. Title, page 1, lines 15 and 16.

Strike: "A RETROACTIVE"

Insert: "AN"

2. Page 3, line 4.

Strike: "JANUARY 1, 1999,"

Insert: "[the effective date of this act]"

3. Page 5, line 28.

Strike: "RETROACTIVELY, WITHIN THE MEANING OF 1-2-109,"

4. Page 5, line 29.

Strike: "July 1, 1999"

Insert: "[the effective date of this act]"

- END -



FREE CONFERENCE COMMITTEE

on Senate Bill 229

Report No. 1, April 13, 1999

Page 1 of 2

Mr. President and Mr. Speaker:

We, your Free Conference Committee met and considered **Senate Bill 229** (reference copy -- salmon) and recommend this Free Conference Committee report be adopted.

For the Senate:

Judith Thom
Chair

Mark McTher

Vicki Cocchiarella

Jane R. Bife

Amendment Coordinator

Rosanne Skelton
Secretary of Senate

For the House:

Daniel Fuchs
Chair

Cliff Trepka

George Golie
Golie

And, recommend that **Senate Bill 229** (reference copy -- salmon) be amended as follows:

1. Title, page 1, lines 15 and 16.

Strike: "A RETROACTIVE"

Insert: "AN"

2. Page 3, line 4.

Strike: "JANUARY 1, 1999,"

Insert: "[the effective date of this act]"

ADOPT

REJECT

FCCR #1
SB 229
AC SB 229-1

800928FC.sjo

3. Page 5, line 28.

Strike: "RETROACTIVELY, WITHIN THE MEANING OF 1-2-109,"

4. Page 5, line 29.

Strike: "July 1, 1999"

Insert: "[the effective date of this act]"

- END -

SENATE BILL NO. 229

INTRODUCED BY F. THOMAS, D. TOEWS, T. BECK, A. ELLIS,
D. GRIMES, T. KEATING, B. KEENAN, S. ORR, D. BERRY, K. MESAROS

A BILL FOR AN ACT ENTITLED: "AN ACT ~~AMENDING THE PREVAILING WAGE LAWS FOR PUBLIC~~
~~WORKS CONTRACTS; EXEMPTING CERTAIN SCHOOL DISTRICT CONTRACTS FOR DISTRICTS FROM~~
~~NONCONSTRUCTION SERVICES FROM JOB CLASSIFICATIONS; CLARIFYING PUBLIC WORKS~~
~~CONTRACT AND BID SPECIFICATION PROVISIONS TO REQUIRE THAT ALL CONTRACTORS AND~~
~~SUBCONTRACTORS INVOLVED IN A PROJECT SHALL PAY STANDARD PREVAILING WAGES,~~
~~INCLUDING FRINGE BENEFITS, FOR ALL JOB CLASSIFICATIONS; ELIMINATING THE CIVIL PENALTY~~
~~AGAINST PUBLIC AGENCIES THAT FAIL TO INCLUDE REQUIRED PREVAILING WAGE PROVISION IN~~
~~CONTRACTS; REQUIRING THE COMMISSIONER OF LABOR AND INDUSTRY TO DIVIDE THE STATE INTO~~
~~56 PREVAILING WAGE DISTRICTS FOR NONCONSTRUCTION SERVICES TO REFLECT LOCAL~~
~~ECONOMIES AND FINANCIAL CIRCUMSTANCES; AMENDING SECTIONS SECTION 18-2-401, 18-2-407,~~
~~18-2-411, AND 18-2-422, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN A~~
~~RETROACTIVE AN APPLICABILITY DATE."~~

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 18-2-401, MCA, is amended to read:

"18-2-401. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) A "bona fide resident of Montana" is a person who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the person's past habitation in this state has been coupled with an intention to make it the person's home. Sojourners or persons who come to Montana solely in pursuance of any contract or agreement to perform labor may not be considered to be bona fide residents of Montana within the meaning and for the purpose of this part.

(2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(3) (a) "Construction services" means work performed by an individual in construction, heavy

1 construction, highway construction, and remodeling work.

2 (b) The term does not include:

3 (i) engineering, superintendence, management, office, or clerical work on a public works contract;

4 or

5 (ii) consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts
6 with professionals licensed under state law.

7 (4) "Department" means the department of labor and industry provided for in 2-15-1701.

8 (5) "District" means a prevailing wage rate district established as provided in 18-2-411.

9 (6) "Heavy and highway construction wage rates" means wage rates, including fringe benefits
10 for health and welfare and pension contributions, that meet the requirements of the Employee Retirement
11 Income Security Act of 1974 and other bona fide programs approved by the United States department
12 of labor and travel allowance that are determined and established statewide for heavy and highway
13 construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails,
14 parking areas, or utility rights-of-way.

15 (7) "Nonconstruction services" means work performed by an individual, not including
16 management, office, or clerical work, for:

17 (a) the maintenance of publicly owned buildings and facilities, including public highways, roads,
18 streets, and alleys;

19 (b) custodial or security services for publicly owned buildings and facilities;

20 (c) grounds maintenance for publicly owned property;

21 (d) the operation of public drinking water supply, waste collection, and waste disposal systems;

22 (e) law enforcement, including janitors and prison guards;

23 (f) fire protection;

24 (g) public or school transportation driving;

25 (h) nursing, nurse's aid services, and medical laboratory technician services;

26 (i) material and mail handling;

27 (j) food service and cooking;

28 (k) motor vehicle and construction equipment repair and servicing; and

29 (l) appliance and office machine repair and servicing.

30 (8) "Public works contract" means a contract for construction services ~~or nonconstruction~~

1 ~~services~~ let by the state, county, municipality, school district, or political subdivision or for
2 nonconstruction services let by the state, county, municipality, or political subdivision other than a school
3 district in which the total cost of the contract is in excess of \$25,000. THE NONCONSTRUCTION SERVICES
4 CLASSIFICATION DOES NOT APPLY TO ANY SCHOOL DISTRICT THAT AT ANY TIME PRIOR TO JANUARY 1, 1999, [THE
5 EFFECTIVE DATE OF THIS ACT] CONTRACTED WITH A PRIVATE CONTRACTOR FOR THE PROVISION OF NONCONSTRUCTION
6 SERVICES ON BEHALF OF THE DISTRICT.

7 (9) (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

8 (i) the heavy and highway construction wage rates applicable to heavy and highway construction
9 projects; or

10 (ii) those wages, other than heavy and highway construction wages, including fringe benefits for
11 health and welfare and pension contributions, that meet the requirements of the Employee Retirement
12 Security Act of 1974 and other bona fide programs approved by the United States department of labor
13 and travel allowance that are paid in the district by other contractors for work of a similar character
14 performed in that district by each craft, classification, or type of worker needed to complete a contract
15 under this part. In each district, the standard prevailing rate of wages must be computed from a weighted
16 average wage rate based on all of the hours worked on work of a similar character performed in the
17 district unless the survey of employers in the district does not generate sufficient data. If the survey
18 produces insufficient data, the rate may be established by the use of other information or methods that
19 the commissioner determines fairly establish the standard prevailing rate of wages. The commissioner
20 shall establish by rule the method or methods by which the standard prevailing rate of wages is
21 determined. The rules must establish a process for determining if there is insufficient data generated by
22 a survey of employers in the district that requires the use of other methods of determining the standard
23 prevailing rate of wages. The rules must identify the amount of data that constitutes insufficient data and
24 require the commissioner of labor to use other methods of determining the standard prevailing rate of
25 wages when insufficient data exists. The alternative methods of determining the prevailing rate of wages
26 must provide for review and the incorporation of data from work of a similar character that is conducted
27 as near as possible to the original district.

28 (b) When work of a similar character is not being performed in the district, the standard prevailing
29 rate of wages, including fringe benefits for health and welfare and pension contributions, that meets the
30 requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved

1 by the United States department of labor and the rate of travel allowance must be those rates established
2 by collective bargaining agreements in effect in the district for each craft, classification, or type of worker
3 needed to complete the contract.

4 (10) "Work of a similar character" means work on private or commercial projects as well as work
5 on public projects."

6
7 ~~Section 2. Section 18-2-407, MCA, is amended to read:~~

8 ~~"18-2-407. Forfeiture for failure to pay standard prevailing wage. (1) Any contractor,~~
9 ~~subcontractor, or employer who pays workers or employees at less than the standard prevailing wage as~~
10 ~~established under the public works contract shall forfeit to the department a penalty at a rate of up to~~
11 ~~20% of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money~~
12 ~~collected by the department under this section must be deposited in the employment security account,~~
13 ~~as provided in 39-51-409, and must be used for enforcement. A contractor, subcontractor, or employer~~
14 ~~shall also forfeit to the employee the amount of wages owed plus \$25 a day for each day that the~~
15 ~~employee was underpaid.~~

16 ~~(2) Whenever it appears to the contracting agency or to the Montana commissioner of labor and~~
17 ~~industry that there is insufficient money due to the contractor or the employer under the terms of the~~
18 ~~contract to cover penalties, the Montana commissioner of labor and industry may, within 90 days after~~
19 ~~the filing of notice of completion of the project and its acceptance by the contracting agency, maintain~~
20 ~~an action in district court to recover all penalties and forfeitures due. This part does not prevent the~~
21 ~~individual worker who has been underpaid or the commissioner of labor and industry on behalf of all the~~
22 ~~underpaid workers from maintaining an action for recovery of the wages due under the contract as~~
23 ~~provided in Title 39, chapter 3, part 2, except that appeal of the hearing officer's decision is made directly~~
24 ~~to district court rather than to the board of personnel appeals.~~

25 ~~(3) The civil penalties assessed against a contractor, subcontractor, or employer under this~~
26 ~~section may not be transferred to or accrue against the contracting agency."~~

27
28 ~~Section 3. Section 18-2-411, MCA, is amended to read:~~

29 ~~"18-2-411. Creation of prevailing wage rate districts -- construction districts -- nonconstruction~~
30 ~~services districts. (1) Without (a) Except as provided in subsection (2), without taking into consideration~~

~~heavy and highway construction wage rates, the commissioner shall divide the state into at least 10 prevailing wage rate districts for construction services.~~

~~(b) The commissioner shall divide the state into a minimum of 56 prevailing wage rate districts for nonconstruction services or one district for each county. An additional prevailing wage rate district must be developed within each county when creation is necessary to adequately reflect local economies and financial circumstances.~~

~~(2) In initially determining the districts, the commissioner must shall:~~

~~(a) follow the rulemaking procedures in the Montana Administrative Procedure Act; and~~

~~(b) publish the reasons supporting the creation of each district.~~

~~(3) A district boundary may not be changed except for good cause and in accordance with the rulemaking procedures in the Montana Administrative Procedure Act.~~

~~(4) The presence of collective bargaining agreements in a particular area may not be the sole basis for the creation of boundaries of a district, nor may the absence of collective bargaining agreements in a particular area be the sole basis for changing the boundaries of a district.~~

~~(5) For each prevailing wage rate district established under this section, the commissioner shall determine the standard prevailing rate of wages to be paid employees, as provided in 18-2-401 and 18-2-402."~~

~~Section 4. Section 18-2-422, MCA, is amended to read:~~

~~"18-2-422. Bid specification and public works contract to contain standard prevailing wage rate.~~

~~All public works contracts and the bid specifications for those contracts must contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, that the contractors and subcontractors shall pay during construction of the project that all contractors and subcontractors involved in a project shall pay the standard prevailing wage, including fringe benefits, for all job classifications."~~

NEW SECTION. Section 2. Effective date -- applicability. [This act] is effective July 1, 1999, on
PASSAGE AND APPROVAL and applies RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, to SCHOOL DISTRICT
contracts entered into on or after July 1, 1999 [THE EFFECTIVE DATE OF THIS ACT].

- END -



AN ACT EXEMPTING CERTAIN SCHOOL DISTRICTS FROM NONCONSTRUCTION SERVICES JOB CLASSIFICATIONS; AMENDING SECTION 18-2-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 18-2-401, MCA, is amended to read:

"18-2-401. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) A "bona fide resident of Montana" is a person who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the person's past habitation in this state has been coupled with an intention to make it the person's home. Sojourners or persons who come to Montana solely in pursuance of any contract or agreement to perform labor may not be considered to be bona fide residents of Montana within the meaning and for the purpose of this part.

(2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(3) (a) "Construction services" means work performed by an individual in construction, heavy construction, highway construction, and remodeling work.

(b) The term does not include:

(i) engineering, superintendence, management, office, or clerical work on a public works contract;

or

(ii) consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts with professionals licensed under state law.

(4) "Department" means the department of labor and industry provided for in 2-15-1701.

(5) "District" means a prevailing wage rate district established as provided in 18-2-411.

(6) "Heavy and highway construction wage rates" means wage rates, including fringe benefits

for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that are determined and established statewide for heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, or utility rights-of-way.

(7) "Nonconstruction services" means work performed by an individual, not including management, office, or clerical work, for:

- (a) the maintenance of publicly owned buildings and facilities, including public highways, roads, streets, and alleys;
- (b) custodial or security services for publicly owned buildings and facilities;
- (c) grounds maintenance for publicly owned property;
- (d) the operation of public drinking water supply, waste collection, and waste disposal systems;
- (e) law enforcement, including janitors and prison guards;
- (f) fire protection;
- (g) public or school transportation driving;
- (h) nursing, nurse's aid services, and medical laboratory technician services;
- (i) material and mail handling;
- (j) food service and cooking;
- (k) motor vehicle and construction equipment repair and servicing; and
- (l) appliance and office machine repair and servicing.

(8) "Public works contract" means a contract for construction services ~~or nonconstruction services~~ let by the state, county, municipality, school district, or political subdivision or for nonconstruction services let by the state, county, municipality, or political subdivision in which the total cost of the contract is in excess of \$25,000. The nonconstruction services classification does not apply to any school district that at any time prior to [the effective date of this act] contracted with a private contractor for the provision of nonconstruction services on behalf of the district.

(9) (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

- (i) the heavy and highway construction wage rates applicable to heavy and highway construction projects; or

(ii) those wages, other than heavy and highway construction wages, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that are paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part. In each district, the standard prevailing rate of wages must be computed from a weighted average wage rate based on all of the hours worked on work of a similar character performed in the district unless the survey of employers in the district does not generate sufficient data. If the survey produces insufficient data, the rate may be established by the use of other information or methods that the commissioner determines fairly establish the standard prevailing rate of wages. The commissioner shall establish by rule the method or methods by which the standard prevailing rate of wages is determined. The rules must establish a process for determining if there is insufficient data generated by a survey of employers in the district that requires the use of other methods of determining the standard prevailing rate of wages. The rules must identify the amount of data that constitutes insufficient data and require the commissioner of labor to use other methods of determining the standard prevailing rate of wages when insufficient data exists. The alternative methods of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character that is conducted as near as possible to the original district.

(b) When work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that meets the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and the rate of travel allowance must be those rates established by collective bargaining agreements in effect in the district for each craft, classification, or type of worker needed to complete the contract.

(10) "Work of a similar character" means work on private or commercial projects as well as work on public projects."

Section 2. Effective date -- applicability. [This act] is effective on passage and approval and

applies to school district contracts entered into on or after [the effective date of this act].

- END -